

**MEMORANDUM**

DATE: April 8, 2005
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief *RK*
Michael Ma, Supervisor
FROM: Development Review Division
Wynn E. Witthans, RLA, AICP *WW*
Development Review Division
(301) 495-4584
REVIEW TYPE: Site Plan Compliance pursuant to Montgomery County Code
Section 59-D-3.6 (Failure to Comply)
CASE #: 8-98001, 8-98001B and 8-02014
PROJECT NAME: Clarksburg Town Center
ZONE: RMX-2
LOCATION: In the northeastern quadrant of the intersection of MD Route 355
and Stringtown Road
MASTER PLAN: Clarksburg and Vicinity Master Plan
HEARING DATE: April 14, 2005

**STAFF RECOMMENDATION:**

Planning Board finding that building heights of subject structures comply with site plan approvals.

Issue: Alleged Building Height Violation – Citizen Complaint

A resident citizen group, the Clarksburg Town Center Advisory Committee ("CTCAC"), has filed a complaint alleging that certain buildings constructed and/or not yet constructed within the Clarksburg Town Center do not comply with Planning Board approvals. They contend that the approval of (five) four-story buildings, of which two are constructed and three are either under construction or not yet started, do not conform to the Master Plan and Project Plan approvals. This complaint is directed to Buildings 3 and 6 (one built and occupied, the other un-built) by Bozzuto Homes and three structures

containing two over two units (one built and two un-built, all unoccupied) by Craftstar (collectively referred to as the "Subject Buildings").

CTCAC has asked the Planning Board to issue a stop work order pursuant to the authority granted to the Planning Board by Section 59-D-3.6 of the Montgomery County Zoning Ordinance. (See Attachments B and D dated December 8, 2004 and January 25, 2005, respectively). This would halt construction on buildings approved but not yet constructed.

Staff has had numerous meetings, conversations and e-mail exchanges with the CTCAC to discuss the allegation that the heights of the Subject Buildings are not in conformance with Planning Board Approvals. Commission staff responded to CTCAC in a letter dated December 30, 2004 (See Attachment C). Staff does not agree with CTCAC's allegations and described why, in staff's view, the project conformed to earlier approvals.

Letters in response to the complaint from the developers, builders, and builders' attorneys can be found in Attachments E, F and G.

A number of letters both pro and con regarding the building height issue were received from residents of Clarksburg Town Center, including residents of the condominiums in question, and from the Clarksburg Civic Association. They are labeled sequentially starting with Attachment I.

For reference, the earlier staff reports and opinions in question are attached to the Planning Board staff report and are available to the public by request from staff files at the M-NCPPC information counter. Attachment H is a pullout listing of the Data Tables from each approval.

Process

The Zoning Ordinance sets forth the process to be followed when an allegation of noncompliance with a site plan approval arises. Section 59-D-3.6 of the County Code (Failure to comply) states, in relevant part, that:

If the Planning Board finds, for any plan approved under this section, on its own motion or after a complaint is filed with the Planning Board or the Department, that any of the terms, conditions or restrictions upon which the site plan was approved are not being complied with, the Planning Board, after due notice to all parties concerned and a hearing, may revoke its approval of the site plan or approve a plan of compliance which would permit the applicant to take corrective action to comply with the site plan. If at the end of the term of the plan of compliance sufficient corrective action has not taken place to cause compliance, the Planning Board may revoke its approval of the site plan or take other action necessary to ensure compliance, including imposing civil fines, penalties, stop work orders and corrective orders under Chapter 50. The Planning Board may request and obtain investigations and reports as to compliance from appropriate County or State agencies.

Upon decision by the Planning Board to revoke approval of a site plan, any applicable building permits and use-and-occupancy permits issued pursuant to a prior Planning Board approval are hereby declared invalid.

The above-quoted section of the Code establishes a multi-stepped process, as described below:

1. Threshold Determination of Noncompliance

If it comes to the attention of the Planning Board that a term, condition or restriction of site plan approval is not being complied with, the Board must first make a finding that the allegation of noncompliance has merit. The Board must hold a public hearing to determine whether a violation of site plan approval exists ("Threshold Hearing"). The Board will receive testimony from the complainant(s) (if applicable), the alleged violating party, and any other interested persons and entities, to determine whether a violation of site plan approval exists.

Following consideration of the evidence of record, including testimony and any evidence received at the Threshold Hearing, the Board will make a finding as to whether the alleged violation constitutes noncompliance with any term, condition or restriction of site plan approval.

2. Compliance Hearing

If the Planning Board finds following the Threshold Hearing that an allegation of non-compliance has merit, Staff will prepare a recommended plan of compliance. A second hearing public hearing will then be scheduled for Planning Board

consideration of, and action on, the recommended plan of compliance ("Compliance Hearing").

Following consideration of the evidence of record, including testimony and any evidence received at the Compliance Hearing, the Board may either (1) approve a plan of compliance ("Compliance Plan") or (2) revoke its approval of the site plan.

3. Subsequent Board Action

If the conditions of the Compliance Plan are not satisfied by the end of the specified time period, the Board may revoke its approval of the site plan or take other action, such as imposing civil fines, penalties, stop work orders and corrective orders, pursuant to authority granted to the Board for enforcement under Section 50-41 of the Subdivision Regulations (Enforcement). Among other things, Section 50-41 sets forth the process for the imposition of civil fines and penalties, the issuance of stop work or corrective orders, and judicial remedies.

Project Background

The Clarksburg Master Plan and Hyattstown Special Study Area ("Master Plan") was approved in June 1994 with a vision for a new town in Montgomery County. The Master Plan calls for the creation of a Town Center in Clarksburg, which would include the historic district as a focal point. Surrounding the Historic District is zoning that allows a mix of uses, including office, residential, and retail. A strong interrelationship between the historic district and new development was proposed to help blend the "old" with the "new."

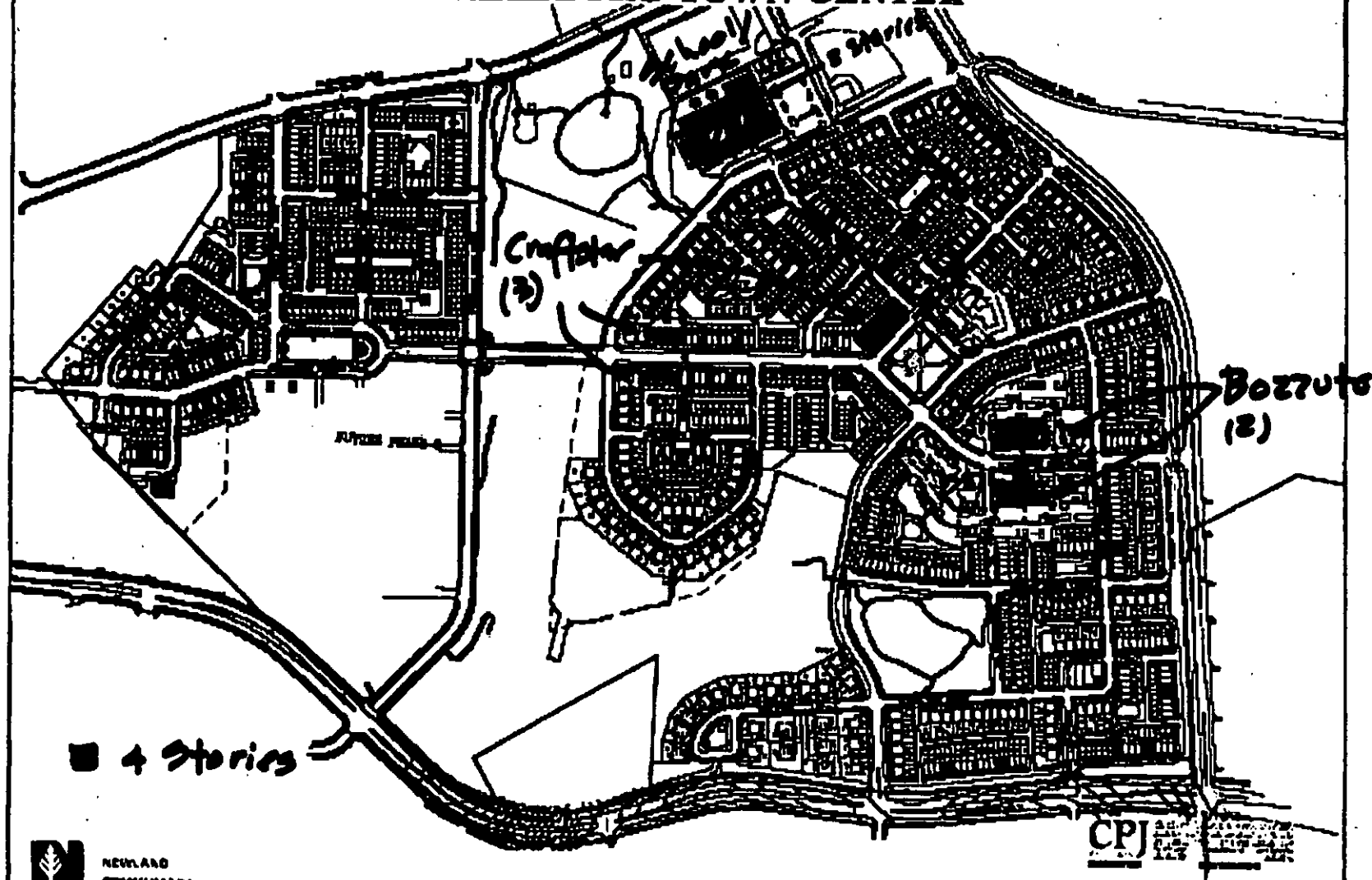
Of particular relevance to this issue is the Master Plan objective relating to mixed use development in the Town Center that recommends that: *all apartment buildings in the Town Center be four stories or less except within walking distance of the transit stop, where building height of six to eight stories may be allowed if Master Plan recommendations concerning compatibility with the historic district can be achieved.* A memo from the Community Based Planning, I-270 Team, dated April 7, 2005 (see Attachment A) states that the height of the Subject Buildings does conform to Master Plan objectives. The CBP memo further notes the conformance of all the Subject Buildings to the height-control buffer areas established for the Historic District (see the map within Attachment A from page 50 of the Master Plan).

In December of 1994, both a Project Plan (#9-94004) and a Preliminary Plan (#1-95042) application for Clarksburg Town Center were submitted for review. The developers were known as Piedmont and Clarksburg Associates and were represented by Steve Klebenoff and Mark Montgomery. The plans were approved in June 1995 and March 1996, respectively. The plans embodied the elements of what is known as neo-traditional land use planning – now a major force in current subdivision design. These projects include a layout of units with a grid street pattern with sidewalks, street trees, common open spaces and a mix of land uses. The plans preserved natural features and buffers to the historic district.

Site Plan Background

The first site plan for Phase One (#8-98001) was approved in March 3, 1998 and Phase Two (#8-02014) was approved June 17, 2002. Piedmont and Clarksburg Associates, represented by Steve Klebenoff and Mark Montgomery, submitted the Phase One Site Plan and sold the first lots to builders for the first townhouses and single family homes. The development of Phase One was taken over later by a second developer, Terrabrooke, in February 2000. Terrabrooke oversaw the construction of additional townhouse units in Phase One. In October 2003, Newland Communities became the Master developer for Clarksburg Town Center. Newland Communities submitted the Phase II site plans and proceeded to construct the remainder of Phase I and Phase II. Currently, Newland Communities has submitted plans for amendments to Phase I. New plans will soon be submitted review for retail and housing in Phase III.

CLARKSBURG TOWN CENTER



NEWLAND
COMMUNITIES

4 STORY HEIGHT PLAN

Location of Buildings:

The Subject Buildings are located on both sides of Clarksburg Square Road – the “Main Street” of the project. The multifamily buildings are paired across the street from one another. The two over two buildings are integrated into blocks and adjoin the manor homes and townhouses and alleys and garages of single family detached homes. They either face each other across the street or they are opposite the uphill town green and community center (see Map). The heights of the buildings are as follows:

Clarksburg Town Center				
Building Height				
Product	Builder	Stories	Height	
22' Townhouse	NVHomes	3 stories	42' 6"	
24' Townhouse	NVHomes	3 stories	42' 6"	
20' Townhouse	Craftstar	3 stories	37' 8"	
22' Townhouse	Craftstar	3 stories	37' 8"	
22' Townhouse	Miller & Smith	3 stories	40'	
2-over-2 TH	Craftstar - 3 Bldgs.	4 stories	48' 5" - 51' 7"	
Condominiums	Bozzuto			
	Bldg 1	3 stories	43' 4"	
	Bldg 2	3 stories	41' 5"	
	Bldg 3	4 stories	53' 8"	
	Bldg 4	3 stories	42' 2"	
	Bldg 5	3 stories	42' 7"	
	Bldg 6	4 stories	50' 10"	
	Manor Houses	3 stories	40' 8"	

Subject Buildings are shown in **BOLD** typeface.

Each site plan approval for Phase I and II included identical development tables that listed the residential building height at 4 stories. (See Attachment I.)

Staff Analysis:

RMX-2 Zone Conformance:

The RMX-2 zone has no height limit. The only height limit is the "Required" height limit imposed by the Project Plan and Site Plan approvals (See Attachment I).

Project Plan:

A Project Plan application submittal is required to provide, among other things, "the general bulk and height of principal buildings," as stated in Section 59-D-2.12 of the M.C. Zoning Ordinance. The Opinion for the approval of the Project Plan included a data table that listed the "REQUIRED" height of buildings as "4 stories." and "PROPOSED" as 4 stories (45 ft). There is no other descriptive discussion within the Project Plan report on building height other than the aforementioned data table. It is staff's view that the table was included in the Project Plan opinion to demonstrate conformance of the project with the requirements and intent of the RMX-2 Zone. The table listed "four stories" under the "Required" column, which is the limitation drawn from the Master Plan recommendations for the Town Center District.¹ Notably, the Master Plan language does not set a numerical cap on the maximum height of residential buildings, stating in relevant part only that "[a]ll apartment buildings in the future Town Center will be four stories or less . . ." Clarksburg Master Plan p. 44 (emphasis added). Therefore, it is staff's view that the proposed "four-story" limitation was deemed to conform to the applicable requirements of the RMX-2 Zone, irrespective of any specific numerical limitation. Additionally, the height of the buildings was not included as a condition of approval.

Site Plan:

One of the findings for Site Plan Approval is that the site plan be "consistent" with the Project Plan, which finding the Planning Board expressly made in approving the Site Plans. The Clarksburg Town Center Site Plans are consistent with the Project Plan approval in regards to building height and this recommendation has been communicated to the Planning Board for each site plan within the staff reports-- the 4-stories "REQUIRED" by the Project Plan are "PROPOSED" by the site plan.

In the Site Plan staff report, as is the case in the Project Plan, the proposed height limitation for residential buildings was set at four stories; however, no specific numerical limitation was recommended. It was, and continues to be, Commission Staff's view that no specific numerical limitation is necessary in order to conform with the requirements of the zoning ordinance and the master plan; and, moreover, a delineation of four proposed stories, with no specific numerical limitation, is consistent with the Project Plan approval. On Staff's recommendation, the Board determined that the Site Plan was consistent with

¹ The Zoning Ordinance permits higher density residential uses under the optional method in the RMX Zones, provided that they are in accordance with, among other things, the limitations contained in the applicable master plan.

the Project Plan, which determination necessarily includes a finding that the proposed height limitation of four stories in the Site Plan is consistent with that proposed in the Project Plan.

Site plans describe the proposed architecture and indicate the proposed building type and number of floors and include other detailed site and landscape plan information i.e. grades, landscaping, lighting etc. At Site Plan, Planning Board findings on building height are based on the requirements of the zone, Master Plan guidance, Project Plan approvals and the subsequent Site Plan data table. In this case, the RMX-2 zone has no height limit except the 4-story limitation imposed by the Project Plan. As with the Project Plan, the Site Plan contains no discussion on building height other than the information contained in the data table.

Following approval of a Site Plan, builders purchase lots, apply for building permits with M-NCPPC staff review and construct their buildings utilizing the development standards contained within the site plan data table in the approved site plan. Because of this separation of the site plan review process from the ultimate detailed architecture for residential subdivision development, exact building heights are not always available for staff to review or to include in the data tables. Of note, pursuant to Section 8-26 of the County Code, the Montgomery County Division of Permitting Services (DPS) requires as a condition of permit that a building comply with "development standards attached to a site plan," not a Project Plan. The Planning Board should note that DPS has not issued any "stop work" orders associated with any building height violations. All the residential buildings within Clarksburg Town Center conform to the 4 story building height limit.

Summary:

Staff is of the opinion that Site Plan #8-98001 is consistent with Project Plan #9-94004 and that finding was properly made by the Planning Board. Staff recommends that the Planning Board find the heights of the Subject Buildings comply with all conditions and development standards related to building heights attached to the Site Plan.

Attachments: As listed in report.



April 7, 2005

MEMORANDUM

TO: Wynn Witthans, Planner Coordinator
Development Review Division

VIA: John A. Carter, Chief
Community-Based Planning Division

Sue Edwards, I-270 Corridor Team Leader *sue*
Community-Based Planning Division

FROM: Nellie Shields Maskal, Community Planner *NH*
Community-Based Planning Division

SUBJECT: Site Plans No. 8-98001: Clarksburg Town Center - RMX-1 Zone; 120 acres; southeast quadrant of the intersection of Piedmont Road and Clarksburg Road; Residential Building Height Issue.

The purpose of this memorandum is to provide comments from the Community-Based Planning Division concerning site plans for the Clarksburg Town Center.

INTRODUCTION**Vision of the Clarksburg Master Plan for the Town Center**

Clarksburg Town Center is located approximately one-half mile from I-270 near the intersection of MD 355 and MD 121 in the 1994 Clarksburg Master Plan Area. The Clarksburg Master Plan proposes a transit-oriented, multi-use Town Center that is compatible with the scale and character of the Clarksburg Historic District along MD 355. The Clarksburg Master Plan also proposes to provide a concentration of uses including a library, post office, park, elementary school, retail center and a mix of housing types. This combination of land uses is intended to help define the Town Center as the focal point of community activities (page 26).

Since the Clarksburg Master Plan was approved, both a Project Plan and Preliminary Plan for the entire Town Center was approved. These approvals have been followed by

(A)

- The Planning Board Opinion for Site Plan #8-98001 referenced a building height of four stories without a numeric measurement of the maximum building height. This determination is consistent with the Master Plan guidance that apartment buildings in the Town Center be four stories or less.
- Buffers to the Historic District with two and three-story building height restrictions do not extend to the location of Buildings #3 and 6 and other buildings that are noted to be over 45 feet high.

CONCLUSION

Multi-family building heights including apartment and two-over-two dwellings of four stories in the Town Center are consistent with the Clarksburg Master Plan and implement the vision of the Plan.

We also understand that the applicant intends to augment the landscaping and screening in the approved Site Plan to address some of the concerns of the residents in the Clarksburg Town Center. Although this additional screening is not part of the initial requirements, these efforts should be encouraged to alleviate concerns of Clarksburg residents.

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CLARKSBURG TOWN CENTER ADVISORY COMMITTEE
Clarksburg, MD 20871

December 8, 2004

The Honorable Derick Berlage
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

VIA: Joyce Coleman, Special Assistant

Dear Mr. Berlage:

It is with great interest in upholding the vision and intent of the Clarksburg Town Center Master Plan that we are writing to you. As you may recall, per the letter you received from our group in August, 2004, the CTCAC (Clarksburg Town Center Advisory Committee) was formed in response to the Town Center residents' discovery of deviations by the developer (Newland Communities) to the Master Plan concept and Project Plan Guidelines. The residents elected the CTCAC to represent them in taking action with MNCPPC and the developer to ensure adherence to the vision and intent of the Master Plan.

Since the CTCAC was elected in July, 2004, we have become very active in researching not only the intent of the Master Plan and approved Project Plan, but also the detailed parameters within the Conditions and Findings, as well as the processes within MNCPPC for site plan submission and approval. As part of our process, we have researched and read every document available on file with MNCPPC relative to Clarksburg Town Center. In doing so, we have made ourselves aware of all requirements under the "Optional Method of Development" for the RMX2 zoning and the related requirements for complete compliance with the Conditions and Findings of the approved Project Plan #9-94004 and Preliminary Plan #1-95042.

The CTCAC and residents are in full agreement with the Land Use Objectives of the Clarksburg Master Plan, especially with regard to creating a pedestrian-friendly town center that will serve as the central focus for the entire study area. The CTCAC finds that in order to uphold these objectives, it is imperative for the developer to adhere completely to the Project Plan Guidelines/Conditions and Findings.

We have determined multiple areas in which Newland has departed from the intent and vision of the Master Plan and, more seriously, violated the Project Plan Conditions and Findings. The most pressing issue is Newland's violation of the height restrictions. The approved Project Plan restricts building heights to 4 stories/45' for residential and 4 stories/50' for commercial. The Master Plan and Project Plan clearly state the necessity for ensuring compatibility of scale with the historic district. As confirmed to us by John Carter and Nellie Maskal of Community Based

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A building, with structure, was in development review, this was a waiver for the height limitation of 45' for residential structures.

CTC residents are gravely disturbed that buildings already constructed in Phase 1-B3 of the CTC development (Bozutto condominiums) measure ^{cp} 53', as recently confirmed to CTCAC by MNCPPC Development Review. Newland also confirmed a height in excess of 45', but stated that the building was 53'4". In either case, the structures are not compatible in scale with the historic district. This is a serious violation which requires immediate attention.

In addition to the buildings already constructed in Phase 1-B3, there are also buildings currently under construction within Phase 2B (Craftstar 2/2 Condominiums - Parcels B & N) which also violate the height restrictions, with planned heights of 51'7". Further, there are several other site plans previously approved for Phase 2C which include additional Craftstar 2/2 Condominiums and Bozutto Condominiums with planned heights exceeding the 45' maximum allowable according to the Project Plan Guidelines. Apparently, the site plans for these structures were erroneously approved, and/or the developer did not specify heights on the site plan (beyond "4 stories") and has violated the height restriction without MNCPPC's awareness. The CTC residents are seeking immediate action by MNCPPC to correct this situation before new buildings are constructed.

Ensuring compatibility with the historic nature of Clarksburg, especially in terms of scale as described with the Master and Project Plan, is essential to creating the type of community that was presented to the residents by the developer and builders when we purchased our properties in Clarksburg Town Center. We appreciate the assistance that we have received from MNCPPC to date in this regard. We have scheduled another meeting with Community Based Planning and Development Review for December 13th to discuss the specifics relative to the height violations described. However, the CTCAC respectfully requests a meeting with you to discuss our overall concerns.

We would appreciate it if a meeting could be scheduled with you prior to December 17th. We will contact Joyce Coleman to arrange the meeting at your convenience.

Sincerely,

Kim Shiley, Co-Chair, CTCAC
Amy Presley
Randy DeFrehn
Joel Richardson
Niren Nagda
Lynn Fantle

Carol E. Smith, Co-Chair, CTCAC
Tim DeArros
Mark Murphy
Jen Jackman
Tricia Larade
Jeff Lunenfeld

(B)

From: El-Baba, Tariq
Sent: Friday, April 08, 2005 12:06 PM
To: Witthans, Wynn
Subject: FW: Building Heights in Clarksburg Town Center

From: Pugh, Carolyn
Sent: Thursday, December 30, 2004 11:16 AM
To: 'Synergisinc@aol.com'
Subject: Building Heights in Clarksburg Town Center

Ms. Presley, attached please find response to your letter of 12/14/2004.



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Ms. Amy Presley
(On behalf of CTCAC)

Subject: Building Heights in Clarksburg Town Center
Phase I Site Plan #8-98001 and Phase II Site Plan #8-02014

Dear Ms. Presley,

Thank you for your continued interest in the regulatory plan approvals for the Clarksburg Town Center.

At the December 13, 2004 meeting between M-NCPPC Staff and representatives of CTCAC, you and the other CTCAC members present expressed your collective view that the developer of the Clarksburg Town Center knowingly submitted a site plan that deviated from the project plan conditions and findings, specifically with respect to the heights of certain buildings. You also stated your opinion that, pursuant to the optional method of development in the RMX-2 zone, under which Clarksburg Town Center was approved, the site plan conditions and findings are tied to and are not severable from the Project Plan. In light of this, you have requested that the Commission issue a notice of violation.

Following a review of all the pertinent documents and careful consideration of your concerns and your position respecting this matter, Commission Staff has concluded that: the Planning Board made the required finding that Site Plan No. 8-98001 ("Site Plan") is consistent with Project Plan No. 9-94004 ("Project Plan"); (2) that finding was properly made; and (3) the buildings in question comply with all conditions and development standards attached to the Site Plan. Having so concluded, Commission Staff finds no basis upon which to cite the developer or builder with a violation and is disinclined to do so.

As you know, the approval of the Project Plan was subject to a number of conditions; however, the height of the buildings was not included as a condition of approval. Rather, the reference to a proposed height of forty-five feet was included parenthetically within the "Proposed" column of a table entitled "Data Summary: Clarksburg Town Center." That table was included in the Project Plan opinion to demonstrate conformance of the project with the requirements and intent of the RMX-2 Zone. As you know, that table listed "four stories" under the "Required" column, which limitation is drawn from the Clarksburg Master Plan ("Master Plan") Land Use Plan recommendations for the Town Center District.¹ Notably, the Master Plan language does not set a numerical cap on the maximum height of apartment buildings, stating in relevant part only that "[a]ll apartment buildings in the future Town Center will be four stories or less" Clarksburg Master Plan p. 44 (emphasis added). Therefore, the proposed "four-story" limitation was

¹ The Zoning Ordinance permits higher density residential uses under the optional method in the RMX Zones, provided that they are in accordance with, among other things, the limitations contained in the applicable master plan.

deemed to conform to the applicable requirements of the RMX-2 Zone, irrespective of any specific numerical limitation. In the Site Plan staff report, the proposed height limitation for residential buildings was similarly set at four stories, however, no specific numerical limitation was recommended. It was, and continues to be, Commission Staff's view that no specific numerical limitation is necessary in order to conform with the requirements of the zoning ordinance and the master plan; and, moreover, that a delineation of four proposed stories, with no specific numerical limitation, is consistent with the Project Plan approval. On Staff's recommendation, the Board determined that the Site Plan was consistent with the Project Plan, which determination necessarily includes a finding that the proposed height limitation of four stories in the Site Plan is consistent with that proposed in the Project Plan.

The Site Plan constitutes a detailed review of the proposed project and assigns the final site plan data limits, with which limits the buildings must conform, in order to comply with conditions of the building permit. With respect to their height, the buildings in question comply with the Zoning Ordinance/Master Plan and Site Plan development standards; and, therefore, in Commission Staff's view, the height of the buildings do not violate the condition of the building permit that the buildings comply with zoning regulations.² At the December 13 meeting, there appeared to be consensus among Commission Staff and attending CTCAC members that the site plan does not specify a height limitation—it only specifies that the buildings will be four stories—and, further, that the buildings in question are four-story buildings. As such, it is not disputed that the buildings in question (including the other multi-story buildings proposed but not yet built, as well as the "two-story over two-story" (2/2) buildings) are in conformance with the Planning Board's approval of the Site Plan.

We appreciate your interest in the Clarksburg Town Center community and recognize that you have a strong vision of what that community should look like. These four-story buildings are, apparently, taller than what you had anticipated and may, therefore, intrude on that vision. However, for the reasons stated above, we have concluded that there exists no basis upon which the Commission can cite the builder or developer for a violation of the regulatory approvals; and, furthermore, any question concerning a potential violation of a condition of the permit is outside of the Commission's authority.

As you know, site plan proposals for the amendment of Phase I (8-98001E) residential and Phase III (8-04034) retail are still pending. The proposals consist of an amendment for a new site plan for the commercial area; and, additionally, an amendment to both Phase I and II residential site plans, in order to modify the "Manor Homes" from 9 units to 12 units. We encourage you to make your views known to Commission Staff and the Planning Board as we proceed with the review and consideration of these amendments.

² It is, of course, outside of the scope of the Commission's authority to make a determination as to compliance with a building permit. Such a determination is properly made by the Montgomery County Department of Permitting Services.

Please contact me if I can be of any further assistance. My Staff will inform you of our future Planning Board dates and will be available to meet with you on the projects currently under review.

Sincerely,

Rose G. Krasnow
Development Review Chief
Maryland National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910
(p) 301 495-4591
(f) 301 325-3462
rose.krasnow@mncppc-mc.org

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Clarksburg, MD 20871

January 25, 2004

The Honorable Derick Berlage
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Subject: Building Heights in Clarksburg Town Center
Phase I Site Plan #8-98001 and Phase II Site Plan #8-02014

Dear Mr. Berlage:

We are writing to you in response to the letter we received from Rose Krasnow relative to height violations within Clarksburg Town Center development. The Clarksburg Town Center Advisory Committee (CTCAC) has reviewed the letter and is astounded by the determination of the Staff on this issue.

The CTCAC, and the entire Clarksburg community, had placed its faith in M-NCPPC, expecting M-NCPPC to faithfully serve as guardians of the Master Plan intent and to ensure adherence to the Board-approved Project Plan. Unfortunately, we find not only that the M-NCPPC Staff has been grossly negligent in the Site Plan review process, but, based on the subsequent Staff determination regarding the height violations, has fallen abysmally short of serving the citizens of Clarksburg. Therefore, we respectfully request a full Board hearing on this issue.

For your record, we have attached a copy of Rose's letter with our specific response to each point. We have also attached our document reference table highlighting supporting detail for our case and position on the matter.

We would like the Board to consider this letter as an issuance of a formal complaint regarding height violations within Clarksburg Town Center development. Based on the provisions of Zoning Ordinance 59-D-3.6, we would also ask the Board to exercise its right to issue a stop work order pursuant to Site Plans previously approved for buildings not yet built, but also having the potential to exceed the height guidelines as defined in the Board-approved Project Plan Findings. Without such action on the Board's part, we fear that development of other buildings will proceed and the community will have no recourse.

Please respond to us with the earliest possible date and time for scheduling of a full Board hearing on this issue. In view of the pending development of other buildings in question, we believe action must be taken immediately. Scheduling of a hearing date prior to February 10th will be greatly appreciated.

Sincerely,

Amy Presley, Kim Shiley, Carol Smith, CTCAC Co-Chairs,
on behalf of the CTCAC

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Ms. Amy Presley
(On behalf of CTCAC)

Subject: Building Heights in Clarksburg Town Center
Phase I Site Plan #8-98001 and Phase II Site Plan #8-02014

Dear Ms. Presley,

Thank you for your continued interest in the regulatory plan approvals for the Clarksburg Town Center.

At the December 13, 2004 meeting between M-NCPPC Staff and representatives of CTCAC, you and the other CTCAC members present expressed your collective view that the developer of the Clarksburg Town Center knowingly submitted a site plan that deviated from the project plan conditions and findings, specifically with respect to the heights of certain buildings (Note: CTCAC did not state that the developer knowingly submitted a Site Plan than deviated from the Project Plan. We did state that the Developer would have been well aware of the Data Table height definitions, as contained within the Project Plan Findings and that perhaps the Developer's submission of "four stories" was deliberately vague. We also pointed out that, even with a Site Plan that stated "four stories," those "four stories" would still be subject to the height limitations defined for "four stories" per the Data Table of the Findings contained within the Board-approved and adopted Project Plan.) You also stated your opinion that, pursuant to the optional method of development in the RMX-2 zone, under which Clarksburg Town Center was approved, the site plan conditions and findings are tied to and are not severable from the Project Plan. This is not merely the "opinion" of CTCAC – it is the Planning Board's determination according to the language of Condition #14 of the Board-approved Preliminary Plan. Under Condition #14, it is stated that:

"... Each term, condition and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are therefore not automatically severable."

In light of this, you have requested that the Commission issue a notice of violation.

Following a review of all the pertinent documents (Specifically which pertinent documents did the Staff review? CTCAC has attached pertinent document information and requests that the Board review and reply specifically to the sections highlighted and also to our response to this letter relative to the height violations.) and careful consideration of your concerns and your position respecting this matter, Commission Staff has concluded that: the Planning Board made the required finding that Site Plan No. 8-98001 ("Site Plan") is consistent with Project Plan No. 9-94004 ("Project Plan"); (2) that finding was properly made (We would like specific accountability and explanation as to why a revised Data Table was created and submitted to the Board along with Wynn Witthan's Site Plan Review submission, rather than using the Data Table contained in the Board-approved and adopted Project Plan Findings. We maintain that, based on submission of erroneous Data Table information, the finding could not possibly have been "properly made" by the Board.) ; and (3) the buildings in question comply with all

conditions and development standards attached to the Site Plan. (The building in question may or may not comply with conditions and standards of the Site Plan itself, but that Site Plan is subject to the requirements of the Optional Method of Development – under which, compliance with the Project Plan is mandatory.) Having so concluded, Commission Staff finds no basis upon which to cite the developer or builder with a violation and is disinclined to do so. (It has been stated to CTCAC members, on more than one occasion and by more than one person within M-NCPPC – including Michael Ma, Wynn Withans and even Derick Berlage, that the action, or lack of appropriate action surrounding initial submission and approval of the Site Plan in question was an “oversight” on the part of M-NCPPC...and that “M-NCPPC will do all it can to avoid such oversight in the future.” Based on these admissions, it is incumbent upon M-NCPPC to call the error out as such and do all in its power to rectify the situation – including calling back into review the other Site Plans erroneously approved. Not to take such actions constitutes negligence on the part of M-NCPPC to abide by its own standards and procedural requirements.)

As you know, the approval of the Project Plan was subject to a number of conditions; however, the height of the buildings was not included as a condition of approval. (Height limitations were contained within the “Findings” of the Board-approved Project Plan. The Conditions of the Preliminary Plan serve to support – under Condition #14 – the requirement to uphold those Findings.) Rather, the reference to a proposed height of forty-five feet was included parenthetically within the “Proposed” column of a table entitled “Data Summary: Clarksburg Town Center.” That table was included in the Project Plan opinion to demonstrate conformance of the project with the requirements and intent of the RMX-2 Zone. As you know, that table listed “four stories” under the “Required” column, which limitation is drawn from the Clarksburg Master Plan (“Master Plan”) Land Use Plan recommendations for the Town Center District.¹ (It is critical here to note that a specific definition of the “four stories” as proposed for the CTC development is shown within the “Proposed” column. This definition is stated as 45’ for residential and 50’ for commercial buildings. It is evident to the CTCAC, the CTC residents the CCA and the Clarksburg Community at large, that the “Proposed” heights were included as a means of ensuring development compatible with the scale and character of the Clarksburg Historic District. This reasoning was confirmed by John Carter, Chief of Community Based Planning. The necessity for and sensitivity to development compatible with the Historic District was clearly a driver throughout development of the Master Plan.

Within the “Ten Key Policies Guiding the Master Plan”:

1. “Town Scale of Development”
6. “Plan proposes a transit-oriented, multi-use Town Center which is compatible with the scale and character of the Clarksburg Historic District”.....

“Assuring compatibility of future development with the historic district has been a guiding principle of the planning process.” (Master Plan p26).

¹ The Zoning Ordinance permits higher density residential uses under the optional method in the RMX Zones, provided that they are in accordance with, among other things, the limitations contained in the applicable master plan.



Notably, the Master Plan language does not set a numerical cap on the maximum height of apartment buildings (– which is exactly why Community Based Planning felt it necessary to include a numerical cap within the Project Plan Findings submitted to and approved by the Board. The goal of assuring compatibility with the future development of the historic district, relative to scale, was a driver for specification of the height limitations within the Project Plan Findings.) , stating in relevant part only that “[a]ll apartment buildings in the future Town Center will be four stories or less” Clarksburg Master Plan p. 44 (emphasis added). Therefore, the proposed “four-story” limitation was deemed to conform to the applicable requirements of the RMX-2 Zone, irrespective of any specific numerical limitation (However, this limitation was not deemed sufficient by Community Based Planning at the time of preparing the Project Plan Findings. Had Community Based Planning felt that “four stories” as allowed within the Master Plan and RMX-2 Zone, without a specified height cap, was sufficient language to ensure “scale and compatibility” with the Historic District, they would not have specified a 45’ residential and 50’ commercial height cap within the Data Table contained within the Findings of the Project Plan.) In the Site Plan staff report, the proposed height limitation for residential buildings was similarly set at four stories, however, no specific numerical limitation was recommended (Please note that the Development Review staff was not at liberty to independently and arbitrarily change or omit at Site Plan review/submission any of the requirements, conditions and findings previously approved by the Board and contained within the Project Plan. If the Staff intended to do such, it would have been required to create an Amendment. Under the rules and guidelines for “Minor Amendment” a change of this nature would not have been allowed without full Board hearing. There is no existing documentation of any amendment to the Project Plan Findings. Please refer to document table and pertinent notes attached – 59-D-2.6.) It was, and continues to be, Commission Staff’s view that no specific numerical limitation is necessary in order to conform with the requirements of the zoning ordinance and the master plan (It is astounding to the CTCAC that the Commission Staff would state that “no specific numerical limitation is necessary.” According to M-NCPPC Board, by way of approval of the Project Plan Findings, it is necessary for development within CTC to conform to the “specific numerical limitations” contained within the Project Plan conditions and findings as approved and adopted, not just the Master Plan and Zoning Ordinances in general. It is a necessity for all development within the Clarksburg Town Center, under the Optional Method of Development, to comply with *all* requirements, conditions and findings of the Project Plan.); and, moreover, that a delineation of four proposed stories, with no specific numerical limitation, is consistent with the Project Plan approval (The Project Plan was approved with Findings containing a specific delineation of the height for those “proposed” four stories. Therefore, with a generic delineation of “four stories” on the Site Plan, it must be expected – and if not, then confirmed by Development Review – that those “four stories” would be in compliance with the specific definition of “four stories” as proposed within the Board-approved and adopted Project Plan Findings. Please refer to the Project Plan Findings – Data Table – and our document table and pertinent notes attached.). On Staff’s recommendation (“Staff” submitted to the Board a revised Data Table along with its recommendation. This Data Table was inconsistent with the Data Table contained in the Project Plan Findings previously approved by the Board. It

removed from the "Proposed" standards for the CTC Development the actual height caps of 45' for residential and 50' for commercial. Submission to the Board of this revised Data Table represents, at best, gross negligence on the part of the Development Review Staff preparing the report. At worst, it represents action which could appear as being unduly influenced by the Developer. In either case, it was clearly a submission of erroneous information to the Board, resulting in an erroneous approval of the Site Plans submitted. This action alone is cause for re-examination of the Site Plans and previous approval process, and grounds, in the opinion of CTCAC, for action under Zoning Ordinance 59-D-3.6.), the Board determined that the Site Plan was consistent with the Project Plan (based on erroneous information presented by the Staff), which determination necessarily includes a finding that the proposed height limitation of four stories in the Site Plan is consistent with that proposed in the Project Plan (only because Staff conveniently removed the height caps that were present in the Data Table contained in the Project Plan previously approved by the Board. The CTCAC requests a full investigation of this action and accountability from M-NCPPC regarding the matter.).

The Site Plan constitutes a detailed review of the proposed project and assigns the final site plan data limits, with which limits the buildings must conform, in order to comply with conditions of the building permit (According to M-NCPPC Staff's own statements to the CTCAC, it is customary and expected that documents from the Master Plan through to the Site Plan follow in increasing level of detail - i.e. that the Site Plan should show a level of detail even greater than that of the Project Plan. The Project Plan, according to the Board's ruling and statements within the Preliminary Plan, serves as the "development authority" for the CTC development - Please refer to our document table and notations attached. Without a specific definition of the "four stories" shown on the Site Plan in question, the Staff would either have had to assume that those "four stories" would comply with the previously defined and approved height caps as contained within the Project Plan, or would have had to seek definition from the Developer. It is the responsibility of the Development Review Staff to ensure that Site Plans submitted comply with Project Plan conditions and findings. It is the duty of the Staff to report responsibly to the Board, as the Board relies on the Staff's review and opinions. As we have stated, we believe Staff actions relative to the submission represent a gross negligence at best.) With respect to their height, the buildings in question comply with the Zoning Ordinance/Master Plan and Site Plan development standards (but they DO NOT COMPLY with the Project Plan Findings... which are the "underlying development authority" for CTC development according to the Board); and, therefore, in Commission Staff's view (The Commission Staff's view was based on erroneous information), the height of the buildings do not violate the condition of the building permit that the buildings comply with zoning regulations.² At the December 13 meeting, there appeared to be consensus among Commission Staff and attending CTCAC members that the site plan does not specify a height limitation (There was no such "consensus"...there was merely a reporting to the CTCAC by Wynn Witthans, and a confirmation by Michael Ma, that the Site Plans in question did not specify height detail, that they merely noted "four

² It is, of course, outside of the scope of the Commission's authority to make a determination as to compliance with a building permit. Such a determination is properly made by the Montgomery County Department of Permitting Services.



stories." CTCAC can only presume that the information shared was accurate.) —it only specifies that the buildings will be four stories—and, further, that the buildings in question are four-story buildings. As such, it is not disputed that the buildings in question (including the other multi-story buildings proposed but not yet built, as well as the "two-story over two-story" (2/2) buildings) are in conformance (A mere confirmation that the Site Plans state "four stories" and that the buildings built and to be built are "four stories" does not constitute conformance with the Project Plan Findings...to which all development within CTC must conform.)with the Planning Board's approval of the Site Plan.

We appreciate your interest in the Clarksburg Town Center community and recognize that you have a strong vision of what that community should look like. (Our "vision" is merely that as defined by the Master and Project Plans. It also the community's vision, as incorporated into those plans by Community Based Planning. It is also the Board-approved vision that Development Review has a duty to uphold in the Site Plan review process.) These four-story buildings are, apparently, taller than what you had anticipated (They are taller than what Community Based Planning had specified, based on the Historic District and need for sensitivity to the scale and character of that district, and what the Board had previously approved based on the Project Plan Findings.) and may, therefore, intrude on that vision (LITERALLY. The building towers above everything within the development – totally out of character with the Historic District and also incompatible with adjacent residences. The Board must not allow further development of this scale. We implore the Board to stop work on other buildings not yet built, but also erroneously approved in previously submitted Site Plans.) However, for the reasons stated above, we have concluded that there exists no basis upon which the Commission can cite the builder or developer for a violation of the regulatory approvals; and, furthermore, any question concerning a potential violation of a condition of the permit is outside of the Commission's authority. (We remain in disagreement as to the existence of a violation. The CTCAC requests a full Board hearing on this issue, as there were clearly several internal violations relative to M-NCPPC's standard procedures and specifically relative to the Data Table alteration in the Site Plan review submission by Development Review Staff to the Board for approval.)

As you know, site plan proposals for the amendment of Phase I (8-98001E) residential and Phase III (8-04034) retail are still pending. The proposals consist of an amendment for a new site plan for the commercial area; and, additionally, an amendment to both Phase I and II residential site plans, in order to modify the "Manor Homes" from 9 units to 12 units. We encourage you to make your views known to Commission Staff and the Planning Board as we proceed with the review and consideration of these amendments.

Please contact me if I can be of any further assistance. My Staff will inform you of our future Planning Board dates and will be available to meet with you on the projects currently under review.

Sincerely,

Rose G. Krasnow
Development Review Chief
Maryland National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910
(p) 301 495-4591
(f) 301 325-3462
rose.krasnow@mmcddc-mc.org

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Clarksburg Town Center Development - Documentation Relative to Height Restrictions

Document	Approvals	Pertinent Data	Notes
Master Plan	Planning Board Approval - June, 1994	<p>Within the "Ten Key Policies Guiding the Master Plan":</p> <p>1. "Town Scale of Development"</p> <p>6. "Plan proposes a transit-oriented, multi-use Town Center which is compatible with the scale and character of the Clarksburg Historic District"</p> <p><i>"Assuring compatibility of future development with the historic district has been a guiding principle of the planning process." (p26)</i></p>	<p>The goal of assuring compatibility with the future development of the historic district, relative to scale, was a driver for specification of the height limitations within the Project Plan findings. This is apparent, as the existing RMX2 guidelines would have been sufficient, and not required explicit specification of height limitations, had Community Based Planning felt that "4 stories" was adequate language to ensure "scale and compatibility" with the historic district.</p>
Project Plan	Planning Board Approved - May 11, 1995	<p>"Based on the oral testimony, written evidence submitted for the record, and the staff report, the following conditions and findings are hereby adopted."</p> <p>"Finding #1: The Planning Board finds that Project Plan #8-94004 as conditioned meets all of the purposes and requirements of the RMX2 zone. A summary follows that compares the development standards shown* with the development standards required in the RMX2 zone." (Page 1 of the Project Plan).</p> <p><i>*(i.e. those proposed for CTC)</i></p> <p>The findings include the data sheet outlining the standard RMX2 zone height ("4 stories") with the proposed heights for Clarksburg Town Center:</p> <p>" 4 stories/45' " for residential buildings</p> <p>" 4 stories/50' " for commercial buildings</p>	<p>The Project Plan includes a data table outlining the permitted standards under RMX2 development (as was also outlined within the Master Plan) compared to the specific limitations proposed for the Clarksburg Town Center. This data table specifically denotes a limit of 45' for residential buildings and 50' for commercial buildings.</p> <p>Compatibility with the "scale and character" of the Clarksburg Historic District was unarguably one of the "guiding principles" behind the Master Plan (and adamantly promoted by the Clarksburg Civic Association, the Historic Society and others who participated in the planning process). The specific height limitations were included within the data sheet of the Project Plan to ensure the desired compatibility with the historic district. John Carter, Neille Maskall, and Michael Ma have all confirmed that the data sheet attached to the approved Project Plan is valid. It was included within the Project Plan to ensure compatibility with the historic district and, having been approved with the Project Plan "findings," the limitations within the data sheet become</p>



			"necessary elements" of development for Clarksburg Town Center.
Preliminary Plan	Planning Board Approved – March 26, 1996	<p>Background: "...the underlying development authority, Project Plan #9-94004, was approved by the planning board on May 11, 1995, after two prior planning board meetings (held on April 6 and 20, 1995). The record for the preliminary plan #1-95042 specifically includes the records from those prior hearings...</p> <p>Therefore, the planning board approves the plan. The approval is subject to the following conditions:</p> <p>...</p> <p>#14. "Preliminary plan #1-95042 is expressly tied to and interdependent upon the continued validity of Project Plan #9-94004. Each term, condition and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are therefore not automatically severable."</p>	<p>The Planning Board itself determined all conditions, findings, or "requirements", as outlined in the Project Plan to be "essential components" of the approved plans and "NOT automatically severable." Therefore, the data sheet containing height definitions of 45' for residential and 50' for commercial can neither be ignored at Site Plan approval, nor arbitrarily over-ridden by any member of the M-NCPPC staff or by the developer. (See definition of "Minor Amendment" under Zoning Ordinance #59... Removing the height definitions would NOT be considered a Minor Amendment – i.e. not allowable without amendment hearing.)</p>
Montgomery County Zoning Ordinance #59	Various dates of acceptance/ amendment	<p>59-C-10.2 Methods of Development</p> <p>2. Optional Method of Development –</p> <p>Under this method, general commercial uses and higher density residential uses are allowed in the RMX zone provided they are in accordance with the provisions of Section 59-C-10.3 as well as the density, numerical limitations and other guidelines contained in the applicable Master Plan approved by the district Council. In addition, a Project Plan and Site Plan must be approved by the Planning Board.</p> <p>59-C-10.3 Optional Method of Development Regulations –</p> <p>This optional method of development accommodates mixed use development comprised of planned retail centers and residential uses at appropriate locations in the County. <i>This method of development is a means to encourage development in accordance with the recommendations and guidelines of approved and adopted Master</i></p>	<p>The Optional Method of Development, is the option under which CTC is zoned for RMX2 development. This option explicitly requires adherence to the Master Plan/Project Plan and Site Plans in accordance with the Project Plan.</p> <p>According to 59-C-10.2, #2, under the Optional Method of Development, the commercial uses and higher density residential uses are allowed only provided that they are in accordance with "numerical limitations" and guidelines of the plans approved.</p> <p>59-C-10.3 states that the Optional Method of Development is a "means to encourage development in accordance with" recommended guidelines. (Clearly shows the intent to regulate development under "Optional Method" vs. leaving development open to interpretation under general</p>

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	<p><i>Plans.</i> Approval of this optional method of development is dependent upon the provision of certain public facilities and amenities by the developer. The requirement for public facilities and amenities is essential to support the mixture of uses at the increased densities of development allowed in this zone.</p> <p>59-C-10.3 Optional Method of Development Regulations – This optional method of development accommodates mixed use development comprised of planned retail centers and residential uses at appropriate locations in the County...</p> <p>59-C-10.3.11 Development Procedure – A. The procedure for approval for an <i>optional method of development in these zones requires a Project Plan in accordance with division 59-D-2 and a site plan in accordance with division 59-D-3.</i></p> <p>59-D-A-2 – Optional Method <i>requires a Project Plan and Site Plan ... precondition for the use of the optional method of development</i></p> <p>59-D-3-23 – Proposed Development – ... (Referencing what must be included within the site plan) ... (a) The location, <i>height</i>, ground coverage and use of all structures.</p> <p>59-D-3.4 – Action by Planning Board (1) ...the Site Plan is <i>consistent with an approved development plan or a Project Plan for the Optional Method of development</i>, it required... (4) ...each structure and use is <i>compatible with other uses and other site plans and with existing and proposed adjacent development.</i></p> <p>59-D-2.6 Amendment: Minor Plan Amendment A minor amendment is an amendment or revision to a plan or any findings, conclusions, or</p>	<p>RMX2 requirements.) Once again, it is apparent that this is why a data sheet denoting the guidelines for development of CTC, including specific height parameters, was included within the Project Plan and subsequently adopted by the Planning Board.</p> <p>Under the Optional Method of development within RMX2 zoning, the Project Plan is an authoritative document. This is explicit under 59-C-10.3.11, as is the requirement for a site plan in accordance with 59-D-3 – requiring that "height" and use of all structures must be noted. As "4 stories" is merely a standard for RMX2 in general, and the approved Project Plan included a data sheet with specific height parameters, under the Optional Method of Development (according to 59-C-10.3.11, 59-D-A-2, and 59-D-3-23) the heights for any structures within a site plan must be in accordance with height definitions/limitations outlined and approved within the Project Plan Findings.</p> <p>(It is clear that the change in height within Wynn Withan's documentation does not constitute a Minor Amendment, according to 59-D-2.6. Even if</p>
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		<p>conditions associated with the plan that does not entail matters that are fundamental determinations assigned to the Planning Board. A minor amendment is an amendment that does not alter the intent, objectives, or requirements expressed or imposed by the Planning Board in its review of the Plan. A minor amendment may be approved, in writing, by the Planning Board staff. Such amendments are deemed to be administrative in nature and concern only matters that are not in conflict with the Board's prior action.</p> <p>59-D-3.6 Failure to Comply</p> <p>If the Planning Board finds for any plan approved under this section on its own motion or after a complaint is filed with the Planning Board or the department that any of the terms, conditions or restrictions upon which the site plan was approved are not being complied with, the Planning Board after due notice to all parties concerned, and a hearing, may revoke its approval of the site plan or approve a plan of compliance which would permit the applicant to take corrective action to comply with the site plan... The Planning Board may revoke its approval of the site plan or take other action necessary to ensure compliance, including imposing civil fines, penalties, stop work orders and corrective orders under Chapter 50... Upon decision by the Planning Board to revoke approval of a site plan, any applicable building permits and use and occupancy permits issued pursuant to a prior Planning Board approval are hereby declared invalid.</p>	<p>Wynn were to position this as a "Minor Amendment" there is no documentation - i.e. approval "in writing" by the Planning Board staff" to support that as a deliberate action by the Planning Board staff.)</p> <p>If the site plan, as confirmed by M-NCPPC staff members (Michael Ma, Wynn Witthans, Rose Krasnow), merely showed "4 stories" as the height notation for the buildings in question, even as approved by the Planning Board, it still does not authorize those "4 stories" to exceed the height limitations as defined within the Project Plan findings and approved by the Planning Board. Under the "Optional Method of Development" the Developer is still obligated to ensure that the "4 stories" comply with the conditions and findings of the Project Plan. The Planning Board is also obligated to enforce those conditions and findings.</p>
Site Plan Review (Wynn Witthans' - Staff Report submission & Planning Board Opinion)	Planning Board Opinion - January 22, 1998	<p>Site Plan Review: Staff Recommendation; Proposal</p> <p>Findings for Site Plan review (Page 35):</p> <p>#1 Site Plan is consistent with the Project Plan approved for this site utilizing the RMX2 optional method of development. (See discussion above.)</p> <p>#2 The Site Plan meets all of the</p>	<p>This is the excerpt from the Staff Report prepared by Wynn Witthans and presented to the Board for approval of the Phase 1 Site Plan.</p> <p>"Within Wynn's Staff Opinion, submitted as part of the site plan review documentation for the Board, is a data table that varies from the data table included in</p>

		<p>requirements of the zone in which it is located. (See project data table" above.)"</p> <p>Planning Board Opinion:</p> <p>"Based on the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:</p> <p>#1. The site plan is consistent with the approved development plan or a Project Plan for the Optional Method of Development, if required.</p> <p>#2 The site plan meets all the requirements of the zone in which it was located."</p>	<p>the approved Project Plan (as part of the "Findings" deemed by the Board to be "essential" components of the Project Plan). The data table that Wynn submitted with her Staff Opinion appears to have been re-written to show a generic "4 stories" denotation for building heights, omitting the specifications of "45' for residential" and "50' for commercial." The first and only appearance of this altered data table among M-NCPPC documentation is within Wynn's Staff Opinion/Site Plan Review. In submitting a new data table, Wynn has independently overridden Community Based Planning's recommendations, as well as the "Findings" approved by the Planning Board in the final Project Plan. Her submission to the Planning Board could be viewed as misleading and negligent, at best. At worst, it could be viewed as a deliberate alteration or omission of specifications, inappropriately serving the developer's desires.</p> <p>Again, as stated within our Zoning Ordinance notes, even in the presence of a generic "4 stories" denotation on the altered data table and/or the submitted Site Plan, the Developer is still accountable to ensure that the "4 stories" are in compliance with the height restrictions of the approved data table/findings as part of the approved Project Plan. Also, according to zoning ordinance for Optional Method, and the Planning Board's own Findings, M-NCPPC is still accountable to enforce the limitations/ guidelines contained within the approved Project Plan Findings. There is no language within the Site Plan Review Staff Report or the Board Opinion that negates the Data Table ("Finding") of the Project Plan. — i.e. that the "4 stories" shown on the Site Plan must be in compliance with the heights as defined — 45' for residential buildings and 50' for commercial</p>
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			buildings.
Site Plan Enforcement Agreement	Montgomery County Planning Board, Linnowes & Blocher, LLP (legal counsel for the Developer) & Piedmont Land Associates (Developer) March 18, 1999	<p>(Page 1)</p> <p>"Whereas, Text Amendment No. 80025, approved July 21, 1981, effective October 15, 1981, amended Section 59-D-3.3 of the Montgomery County Code to require as part of the site plan review process that <i>applicants enter into a formal agreement with the Planning Board requiring the applicant to execute all features of the approved site plan in accordance with the Development Program required by Section 59-D-3.23 of the Montgomery County Code....</i>"</p> <p>"Whereas, the parties hereto desire to set forth herein their respective requirements and obligations pursuant to Section 59-D-3.3 of the Montgomery County Code, 1984... Now, therefore, in consideration of the mutual promises and stipulations set forth herein and pursuant to the requirements of Section 59-D-3.3 of the Montgomery County Code, 1984.... the parties hereto agree as follows:</p> <p>1. In accordance with approval by the Planning Board of Site Plan No. 8-88001, <i>Developer agrees that, when it commences construction on any phase as set forth in the Development Program attached hereto as Exhibit "B", or any amendments thereto, it will execute and maintain all the features of the site plan for that phase as required by Section 59-D-3.23 in fulfillment of the approval granting Site Plan No.8-98001, and any subsequent amendments approved by the Planning Board....</i></p>	The Developer and its legal counsel were aware of the conditions for development of RMX2 under the "Optional Method" of development. The Project Plan (including all conditions and findings) is the recognized and underlying authority. 59-D-3 requires height specification, as well as assurance that buildings are consistent with the approved Project Plan.

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March 8, 2005

The Honorable Derick Berlage, Chairman
and Members of the
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Response to Letter dated January 25, 2005 from Clarksburg Town Center Advisory
Committee ("CTCAC") Regarding Building Height in Clarksburg Town Center

Dear Chairman Berlage and Members of the Planning Board:

Our firm represents Bozzuto Homes, Inc. ("Bozzuto"), owner and developer of certain portions of the Clarksburg Town Center. The purpose of this letter is to respond to the January 25, 2005 letter complaint of the CTCAC alleging height violations of existing and proposed buildings in the Clarksburg Town Center.

Complaint

The specific contention of the CTCAC is that height violations exist in the Clarksburg Town Center because certain unspecified buildings, although 4 stories, exceed 45 feet in height, which is the maximum height in feet that the CTCAC contends was established by the approved Project Plan. As a result, the CTCAC is requesting, pursuant to Section 59-D-3.6 of the Zoning Ordinance, that the Planning Board "... issue a stop work order regarding Site Plans previously approved for buildings not yet built, but also having the potential to exceed the height guidelines as defined in the Board-approved Project Plan." See January 25, 2005 CTCAC letter. The complaint does not specify the existing building(s) alleged to be in violation or those not yet built but allegedly having the "potential" to exceed the purported height limitation of 45 feet. However, based on information Bozzuto has obtained from discussions with Staff and others, Bozzuto understands that the allegations as they pertain to Bozzuto are limited to the following two multi-family buildings: (i) Building #3, a 30-unit condominium building which has been constructed and sold to others, and (ii) Building #6, a

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The Honorable Derick Berlage, Chairman,
And Members of the Mont. Co. Planning Board
March 8, 2005
Page 2

30-unit multi-family building, which has received site plan approval, but is not yet under construction.

Factual and Legal Background

The Clarksburg Town Center is zoned RMX-2 (Residential Mixed-Use Development, Specialty Center) and is an optional method project. The optional method of the RMX-2 Zone does not specify a maximum building height for the development. Under the optional method, general commercial uses and higher density residential uses are allowed if they comply with the optional method of development regulations of the RMX-2 Zone (Sec. 59-C-10-3.1) and the density, numerical limitations, and other guidelines contained in the applicable Master Plan (Sec. 59-C-10.2.2). In addition, a project plan and site plan(s) must be approved by the Planning Board under the optional method.

Project Plan No. 9-94004 for the Clarksburg Town Center (the "Project Plan") was approved by the Planning Board by Opinion mailed on May 11, 1995 (the "Project Plan Opinion"). In the Project Plan Opinion, the Planning Board specifically finds that the Project Plan conforms with the requirements and intent of the RMX-2 Zone and the approved and adopted Clarksburg Master Plan & Hyattstown Special Study Area (1994) ("Master Plan"). As noted above, the RMX-2 Zone does not specify a maximum height as a development standard. In this regard, Section 59-D-2.12(d) regarding project plans requires only that a project plan include a land use plan showing, *inter alia*, the "... general bulk and height of the principal buildings ...". Section 59-D-2.42 provides that, to approve a project plan, the Planning Board must find, *inter alia*, that it complies with the intents and requirements of the zone, including the applicable Master Plan. The CTCAC argues that although it is uncontested that Buildings #3 and #6 are 4 stories, both the Master Plan and the Project Plan required a maximum height limitation for residential buildings in the Clarksburg Town Center of 45 feet. This argument is without merit. Initially, the Master Plan, as more fully discussed below, does not specifically state or in any way imply that a 4-story structure in excess of 45 feet is incompatible with the Master Plan recommendations for the Historic District, as advanced by the CTCAC. Second, the Project Plan establishes the required height of the residential building to be 4 stories consistent with the Master Plan, but does not restrict the general height as to be 45 feet or less.

On this latter point, the CTCAC argues that because the Project Plan Opinion contains a data table indicating that the *required* height of residential buildings is "4 stories" and that the

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The Honorable Derick Berlage, Chairman,
And Members of the Mont. Co. Planning Board
March 8, 2005
Page 3

proposed height is "4 stories (45 ft.)," the Project Plan is somehow reflecting a strict compatibility requirement of the Master Plan that the buildings must not only be 4 stories, but also not exceed 45 feet in height rather than a general anticipated height in feet for a 4-story building as required by Section 59-D-2.12(d). As noted, Buildings #3 and #6 are 4 stories. The final measurement of the height of Building #3 in feet is approximately 53 feet 7-3/4 inches and that of Building #6 approximately 50 feet. This height in feet in no way violates the 4-story requirement of the Project Plan, nor the applicable provisions of the Master Plan as more fully discussed below.

Master Plan

A careful review of the Master Plan indicates that there is no basis for the contention of the CTCAC that any residential building in the Clarksburg Town Center in excess of 45 feet somehow violates the Master Plan. In this regard, the Master Plan does not set a specific height limitation for buildings in the Town Center in terms of feet. Specifically, the Master Plan states at p. 46 as follows:

"All apartment buildings in the future Town Center will be four stories or less except within walking distance of the transit stop, where a building height of six to eight stories may be allowed if Master Plan recommendations concerning compatibility with the historic district can be achieved."

Additionally, Figure 21 of the Master Plan, entitled "Clarksburg Historic District Buffers," graphically illustrates the specified Master Plan guideline found at p. 48 of the Master Plan to create certain buffer areas adjacent to the Historic District. The Master Plan recommends that the areas on the east side of the Historic District, specifically within 400 feet east of existing MD 355 and/or on land which is within the Historic District, development be limited to single-family detached structures that are no higher than 2 stories. The Master Plan further recommends that certain areas between existing MD 355 and relocated MD 355 to the west (an area of approximately 550 feet) also be limited to detached housing with a maximum of 2 stories. Finally, the Master Plan calls for the area between relocated MD 355 and the transitway (approximately 500 feet) have residential housing with a maximum of 3 stories.

According to the Master Plan, these specific buffer recommendations were intended to "... help assure a sympathetic relationship between the 'old' and 'new' areas of Clarksburg," thereby

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The Honorable Derick Berlage, Chairman,
And Members of the Mont. Co. Planning Board
March 8, 2005
Page 4

effecting compatibility with the Historic District. These Master Plan recommendations on height limitations are very specific and deal with stories only, not specific limitations in feet. Moreover, the "buffer" recommendations regarding the Historic District deal with areas that do not encompass and are indeed far removed from Buildings #3 and #6 of the Clarksburg Town Center. These areas are in the Town Center and the Master Plan specifically permits 4 stories to as many as 8 stories if within walking distance of the transit stop. Therefore, there is no basis for the CTCAC's contention that the scale and character of the Clarksburg Historic District requires the Master Plan to be read as prohibiting residential structures in the Town Center in excess of 45 feet or that the Project Plan restricts the height to 45 feet. All that is required is that these structures be 4 stories, a requirement that has been fully complied with.

Site Plan

The RMX-2 Zone further requires an approved site plan prior to building permit. The CTCAC contends that since the Project Plan purportedly capped the height of the multi-family residential buildings at 45 feet, the Site Plan could not permit a 4-story structure with height in feet excess of 45 feet. Once again, this conclusion is unsupported by the facts and the law. The Planning Board approved the Phase I Site Plan in an Opinion mailed on March 3, 1998 (the "Phase I Site Plan Opinion"). The Phase I Site Plan Opinion specifically found that the Phase I Site Plan was consistent with the approved Project Plan for the optional method of development and met all of the requirements of the RMX-2 Zone. Moreover, this Opinion provides Condition 38:

"The applicant may propose compatible changes to the units proposed, as market conditions may change, provided the fundamental findings of the Planning Board remain intact and in order to meet the Project Plan and Site Plan findings. Consideration shall be given to the building type and location, open space, recreation and pedestrian and vehicular circulation, adequacy of parking, etc. for staff review and approval."

The final determination of "height of building" expressed in feet is dependent upon several factors such as final architecture, setbacks, grading, etc., and will vary within a residential building of any number of stories. See 59-A-2.1. Moreover, due to the size and scale of the project, as illustrated by Condition 38, flexibility in matters not associated with fundamental findings of the Planning Board were anticipated after Site Plan approval. Based on a review of the Master Plan, the RMX-2 Zone and Project Plan and Site Plan findings, the notion that 45 feet

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The Honorable Derick Berlage, Chairman,
And Members of the Mont. Co. Planning Board
March 8, 2005
Page 5

was a fundamental finding of the Planning Board is erroneous. A 4-story structure consistent with the Master Plan recommendations and the definition of height from the Zoning Ordinance is the proper standard on which to assess compliance. It is the standard which the Staff used to respond to the CTCAC in properly rejecting its contention of height violations. Far from the unfortunate and misguided allegations by the CTCAC of "gross negligence" or undue influence by the Developer, the Staff applied the proper standards of review to the Project Plan and Site Plans and has properly rejected the CTCAC's claim of height violations.

Similarly, Building #6 was approved as part of the Phase II Site Plan for which the Planning Board issued an Opinion mailed June 17, 2002 (the "Phase II Site Plan Opinion"). Once again, the Planning Board found that the Site Plan was consistent with the Project Plan and requirements of the RMX-2 Zone. In the Phase II Site Plan Opinion, the Planning Board again identified the height of the buildings to be 4 stories and did not specify a height in terms of feet.

For the reasons stated above, there are no height violations by Bozzuto as it pertains to the buildings in question, of the Project Plan or Site Plan and, therefore, no grounds exist pursuant to Section 59-D-3.6 of the Zoning Ordinance for a finding by the Planning Board of a violation of the Site Plans.

Thank you for your attention to this matter. Should you require further information, please feel free to contact me.

Very truly yours,

LINOWES AND BLOCHER LLP

Barbara Sears /kw
Barbara A. Sears

cc: Mr. Clark Wagner
Ms. Jackie Mowrey
Ms. Rose Krasnow
Mr. Michael Ma
✓ Ms. Wynn Witthans

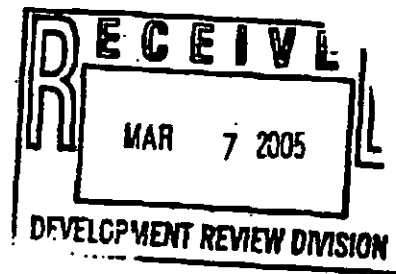
(E)

**LINOWES
AND BLOCHER LLP**
ATTORNEYS AT LAW

March 4, 2005

By Overnight Delivery

Hon. Derick Berlage, Chair
and Members of the Montgomery
County Planning Board
Maryland-National Capital Park
and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910



Re: Clarksburg Town Center -- Building Height Compliance

Dear Chairman Berlage and Members of the Planning Board:

This office represents NNPII-Clarksburg L.L.C. (formerly Terrabrook Clarksburg LLC) ("Newland"). Newland is the master developer of the Clarksburg Town Center. This letter responds to the January 25, 2004 complaint filed by the Clarksburg Town Center Advisory Committee ("CTCAC") concerning alleged building height violations within the development. Please include this letter in the public hearing record.

Clarksburg Master Plan

The thrust of CTCAC's argument seems to be that building height within a 4-story structure in excess of 45 feet is, *per se*, incompatible with the historic district and contrary to the recommendations of the Approved and Adopted Clarksburg Master Plan & Hyattstown Special Study Area (1994) ("Master Plan") and subsequent Planning Board approvals for the Town Center development. The CTCAC relies on language selectively extracted from the Master Plan as support for its contention. As discussed below, the language cited by CTCAC is taken out of context and consists of generally stated principles the Master Plan itself clarifies with specific recommendations. In its letter, the CTCAC fails to advise the Board of the specific provisions of the Master Plan relevant to the building height issue. In so doing, the CTCAC tends to mislead the Board and unjustly criticizes the significant efforts by Staff in administering this large and complex development.

First, the Master Plan contains absolutely no specific height limitation for buildings in the Town Center in terms of feet. To the contrary, the Master Plan recommends that "all apartment buildings in the future Town Center will be four stories or less except within walking distance of

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Hon. Derick Berlage, Chair
and Members of the Montgomery
County Planning Board
March 4, 2005
Page 2

the transit stop, where a building height of six to eight stories may be allowed if Master Plan recommendations concerning compatibility with the historic district can be achieved." p. 46.

Thus, the Master Plan does not support the CTCAC argument for imposition of a specific building height limitation in terms of feet. Moreover, the above-quoted passage demonstrates buildings in the Town Center District containing as many as eight stories are not, *per se*, incompatible with the historic district. Rather, the Master Plan confirms that a building containing up to eight stories may in fact be authorized if the Master Plan's recommendations regarding compatibility can be achieved.

The CTCAC also quotes part of a general statement found in Master Plan Policy 6 that states assuring compatibility with the historic district was a guiding principle of the planning process. p. 26. However, the CTCAC fails to advise the Board that the detailed discussion under Policy 6 recommends a specific buffer concept around the historic district to protect its character. *Id.* The Master Plan describes the buffer concept in detail, along with other recommendations, to assure development around the historic district complements the district's scale and character. p. 48-49. Again, the Master Plan recommendations in this regard do not contain any height limitation in terms of feet. Moreover, in pertinent part, the Master Plan recommends the following to assure the desired relationship between the "old" and "new" elements of Clarksburg:

"On the east side of the historic district, all development 400 feet east of existing MD 355 and/or on land which is within the historic district should be single-family detached structures which are no higher than two stories...New development near the church on Spire Street should be smaller in scale and sufficiently set back from the church." p. 49. (Emphasis supplied.)

The Master Plan also contains a diagram (Figure 21) that graphically represents the above guidelines (Attachment 1). The CTCAC fails to disclose to the Board either the specific Master Plan recommendations regarding compatibility with the historic district or Figure 21.

Figure 21 and the Master Plan language quoted above demonstrate the buffer area and height limitations recommended to assure a compatible relationship with the historic district are limited to the areas immediately adjacent to the historic district. The buildings in question are located more than 400 feet east of MD 355 and therefore are not subject to the height limitations within the described buffer area. In fact, the Bozzuto Condominium buildings are located over 2,500

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Hon. Derick Berlage, Chair
and Members of the Montgomery
County Planning Board
March 4, 2005
Page 3

fect from the designated buffer area and are not visible from the historic district. As a consequence, the previously discussed recommendation for apartments containing 4 stories is the controlling guidance in the Master Plan.

RMX Zone, Project Plan and Site Plan

The Town Center is classified RMX-2. The CTCAC cites certain provisions of the Zoning Ordinance for the proposition that optional method development in the Zone is intended to encourage development in accordance with the recommendations, including the numerical limitations, of the Master Plan. However, as discussed above, more than a selective reading of the Master Plan demonstrates its language does not support the specific height limitation the CTCAC seeks to impose. This is particularly evident since the CTCAC argues such height limit was imposed to assure compatibility with the historic district in accordance with the Master Plan. However, the Master Plan assured a compatible relationship between "old" and "new" Clarksburg by expressly including the specific (and inapplicable) buffer recommendations discussed above.

We further note the project plan is in the nature of a concept plan. For example, Section 59-G-2.12(d) of the Zoning Ordinance requires the project plan to show only "the *general* bulk and height of the principal buildings" and "a *preliminary* classification of dwelling units by type...."(emphasis supplied) Section 59-D-3.4 of the Zoning Ordinance confirms the general nature of the project plan by requiring a site plan "to be consistent" (i.e., harmonious or compatible) with an approved project plan. Section 59-D-3.4 does not require the site plan to be an exact replica of the project plan. See *Logan v. Town of Somerset*, 271 Md. 42, 57-58, 314 A.2d 436, 444 (1974) (construction and maintenance of swimming pool found to be consistent with the use of land for public park purposes); *Carriage Hill-Cabin John, Inc. v. Maryland Health Resources Planning Commission*, 125 Md. App. 183, 222, 724 A.2d 745, 765 (1999) (in evaluating a comprehensive care facility application's "Less Costly or More Effective Alternatives" criterion, numerical cost comparisons are not relevant when costs fall within a reasonable range, and projects may be found consistent even if one applicant's costs exceed that of another's in a comparative review) (quoting COMAR 10.24.01.07H(2)(c); *MacDonald v. Board of County Commissioners*, 238 Md. 549, 555, 210 A.2d 325, 328 (1965) ("the building of a golf course, the dredging of Swan Creek, the reservation of a school site . . . and the authorization of public utility services . . . are as consistent with increased rural residential development as they are with the building of high-rise apartments"). Thus, decisional precedent also confirms "consistency" does not mean exactitude. Nevertheless, and the foregoing

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Hon. Derick Berlage, Chair
and Members of the Montgomery
County Planning Board
March 4, 2005
Page 4

notwithstanding, we also note the data table included with the Board's opinion approving the Project Plan specifically identified the *required* building height as "4 stories." Therefore, construction of the four story apartments in question satisfied this criterion.

We further note the RMX-2 Zone does not specify a maximum building height for development. Rather, because development in the Zone requires approval of a site plan, building height limits are established by the site plan approval. The Planning Board approved Site Plan 8-98001 for Phase I of the Town Center by its Opinion mailed on March 3, 1998. In its Opinion, the Planning Board specifically found the Site Plan as conditioned was consistent with the approved Project Plan. Significantly, the Board did not impose a condition specifying a maximum building height for development. To the contrary, Condition No. 38 of the Opinion states:

"The applicant may propose compatible changes to the units proposed, as market conditions may change, provided the fundamental findings of the Planning Board remain intact and in order to meet the Project Plan and Site Plan findings. Consideration shall be given to building type and location, open space, recreation and pedestrian and vehicular circulation, adequacy of parking etc. for staff review and approval." (Emphasis supplied.)

Therefore, contrary to the CTCAC's contention that the Project Plan established numerical standards that were inviolate, the Board's opinion approving the Phase I Site Plan demonstrates unequivocally that the Board delegated authority to staff to "review and approve" modifications in units and building types and locations provided the fundamental findings of the Board remained intact and in order to meet the Project Plan and Site Plan findings. As discussed above, the Master Plan authorizes 4-story buildings in the Town Center outside the historic district buffer area and without limitation as to building height in terms of feet. Furthermore, the data table appended to the Project Plan Opinion identified 4 stories as the required height limit. We also note the January 16, 1998 Staff Report and Recommendation for Site Plan 8-98001 stated "The multifamily units are four story apartment style buildings . . ." p. 12. The Staff Report also contained a project data table which similarly identified both the "Permitted/Required" building height and the "Proposed" building height as 4 stories. p. 32.

Regarding the Phase II Site Plan (8-02014), the Board's Opinion mailed June 17, 2002 specifically found the Site Plan, as conditioned, was consistent with the Project Plan. Similar to the Project Plan Opinion and Phase I Site Plan Opinion, the Board did not impose a numerical condition regarding maximum building height. However, the Board incorporated the May 2,

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Hon. Derick Berlage, Chair
and Members of the Montgomery
County Planning Board
March 4, 2005
Page 5

2002 Staff Report as a part of its Opinion. The Staff Report contains a project data table that identifies the "Permitted/Required" building height as 4 stories and the "Proposed" building height as 4 stories. No height limitation in terms of feet is referenced.

For the foregoing reasons, we respectfully request the Board find that no cause exists for issuing a notice of violation or a finding of noncompliance with the terms, conditions or restrictions of the Town Center site plans.

Thank you for consideration of these remarks. We look forward to discussing this matter before the Board at the upcoming hearing.

Very truly yours,

LINOWES AND BLOCHER LLP


Todd D. Brown, Esquire

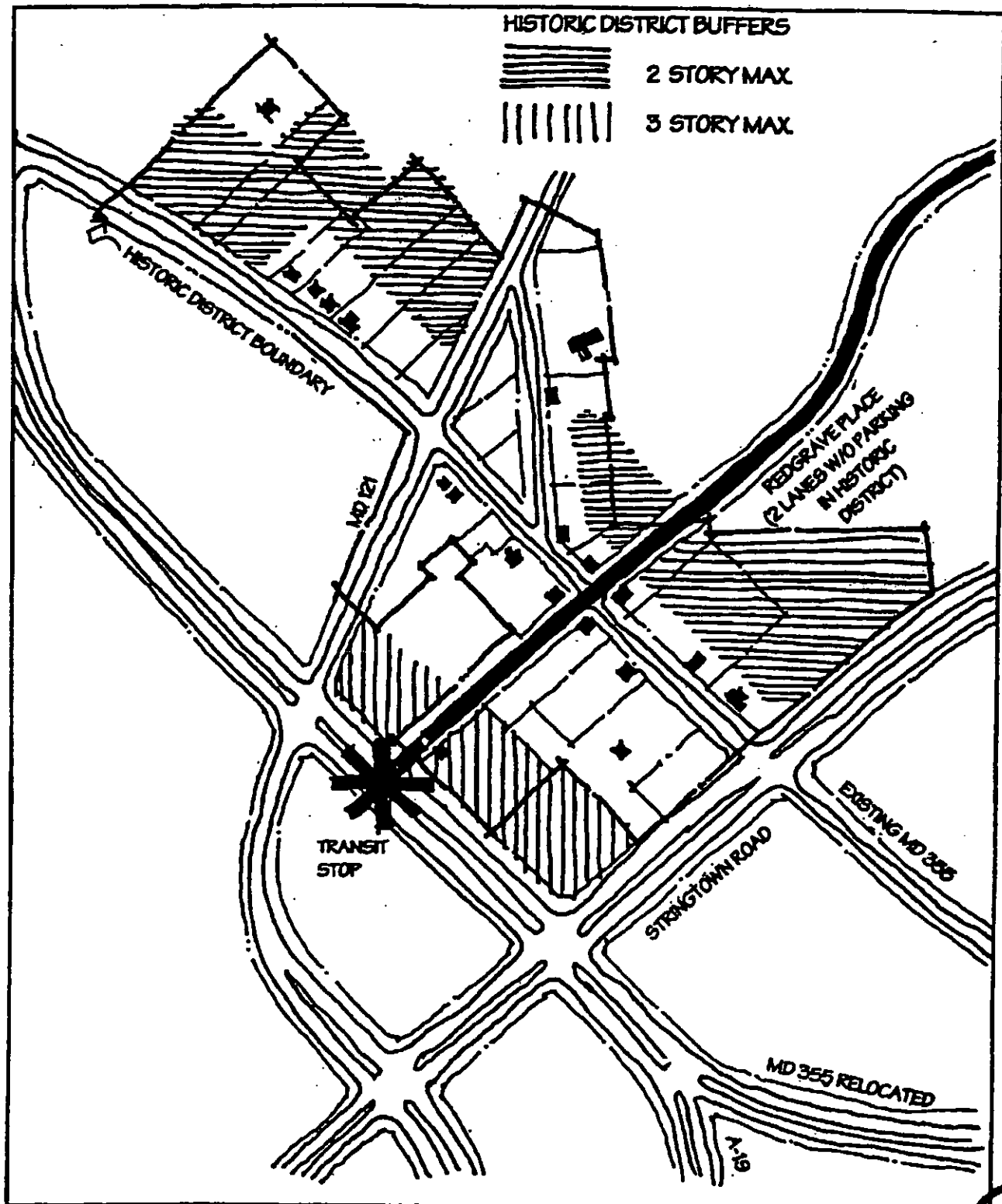
TDB:cp
Attachment

cc: Hon. Michael Knapp
Ms. Kim Ambrose
Ms. Rose Krasnow
Mr. Michael Ma
Ms. Wynn Witthans
Mr. John Carter
Ms. Sue Edwards
Ms. Nellie Maskal



Clarksburg Historic District Buffers

Figure 21



Clarksburg Master Plan and Hyattstown Special Study Area
 APPROVED AND ADOPTED JUNE 1994



MARYLAND-NATIONAL CAPITAL
 PARK & PLANNING
 COMMISSION

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March 10, 2005



The Honorable Derick Berlage
Chair, Montgomery County Planning Board
The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Building Heights in the Clarksburg Town Center

Dear Chairman Berlage and Planning Board Members:

We would like to express our support for the Development Review Division's position regarding the four stories. We relied upon the understanding that the development approvals require a flexible four story limitation. We did not understand them to impose a rigid 45' height limitation, and would oppose its imposition now. We ask the Planning Board to consider our substantial investment in the look and feel of the Clarksburg Town Center, a lovely area.

Below, we explain the design of our townhome models, which are well-built, attractive, marketable and fit well within the Clarksburg Town Center, and meet the four story standard.

Craftstar's two story townhome models are stacked one on top of the other. In the vernacular, the townhomes are called "two over two's." Each model contains two separate, two story, living areas or dwellings. The two models are called the Madison and the Jefferson.

The two over two structure measures about 46' 6" to the roof's midpoint. Interior and exterior design features are necessary to meet the aesthetic requirements for Clarksburg's traditional new town development and marketplace expectations. We provide a 9' ceiling for the living areas and an 8' ceiling for the bedrooms. Although adequate, but certainly not ample, much less extravagant, the ceiling heights accommodate the Clarksburg Town Center's traditional window designs and trim details, and afford a window size that meets the building code for emergency escape.



March 10, 2005

Page 2

Less obvious, but no less important to the construction of a sound home, the structural floor system and the roof framing are typical for similarly sized townhomes. They are not unusual, yet they add to the height. Although we were able to successfully marry the traditional look and feel of the Clarksburg Town Center with marketplace demands, it was not an easy task. Eliminating the flexibility afforded by a four story standard with a rigid, numerical one, would have serious negative repercussions in terms of design and quality, and for no apparent reason.

The townhomes will be seen from various vantage points. Our "5/12 roof pitch" has a lower slope than others in the Clarksburg Town Center, which adds diversity and interest while maintaining the traditional new town look and feel. Even still, a 46' 6" roof versus a 45' roof is imperceptible even close up. When viewed nearby from the street, the roof's pitch falls behind the 41' 6" fascia board at the soffit, the end of the roof eave sloping above the upper windows.

As further comfort concerning the beauty and compatibility of our models, we note that we used the same dimensions, but with a slightly steeper roof pitch (6/12), nearby, in the Kentlands and in Quince Orchard Park, in Gaithersburg, and elsewhere in our Jefferson Park development in Fairfax County. In all locations, the models have been very popular.

We are very proud of our models, and, yet, we do not believe that they are overstated or overdone. Rather, like a traditional new town, they are of a human and comfortable scale, look and feel. We believe imposing a rigid 45' limit would be unwise, unfounded and unfair.

Thank you for your consideration.

Sincerely yours,



Curtis W. Adkins
Vice President
Craftstar Homes, Inc.

cc: Mr. Kenneth J. Mergner, General Manager, Construction, Craftstar Homes, Inc.



DATA SUMMARY: CLARKSBURG TOWN CENTER

Items	Required	Proposed
Lot Area	NA NA	201.34 acres (RMD-2) 68.82 acres (RDT) 270.16 acres total
Minimum Green Area or Outside Amenity Area:		
a. Within Commercial Area	15% (2.19 ac.)	28% (4.06 ac.)
b. Within Residential Area	50% (93.37 ac.)	53% (99.47 ac.)
c. Within RDT Area	NA	(25.72 Acres)
Density of Development Shown in the Master Plan:		
a. Retail	150,000 sq.ft.	150,000 sq.ft.
b. Office	770,000 sq.ft.	100,000 sq.ft.
c. Civic Use (not including elementary school)	NA	24,000 sq.ft.
d. Residential	1380 du (5-7 du/ac)	1300 du (6.6 du/ac)
MPDU's	12.5%	12.5%
Maximum Gross Leasable (Non-Residential) Floor Area	600,000 sq.ft. (0.5 FAR)	250,000 sq.ft. (0.39 FAR)
Setbacks:		
a. From One-Family Zoning		
- Commercial Bldgs.	100 ft.	300 ft. min
- Residential Bldgs.	50 ft.	50 ft. min.
b. From Any Street**		
- Commercial Bldgs.	NA	0 ft. min.
- Residential Bldgs.	NA	10 ft. min.
Building Height:		
a. Commercial	4 stories	4 stories (50 ft.)
b. Residential	4 stories	4 stories (45 ft.)
Parking Spaces:		
a. Off-street	2910	2910
b. On-street	NA	596**

Notes: * No minimum setback is required if in accordance with an approved master plan.

** Off-street parking is necessary to provide street oriented buildings. A waiver from the on-street parking requirements is needed within some of the townhouse and multi-family areas.

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B-98001

ANALYSIS: Conformance to Development Standards - RMX-2

PROJECT DATA TABLE

Development Standard	Permitted/ Required	Proposed
Lot Area (ac.):	36 ac min.	120.17 ac Phase I 270.16 ac Total
Dwelling Units:		
One-family detached		75
Townhouse		295
Multiple-family		398
TOTAL	150	768
Moderately-priced DUs included(12.5%)	96	96
Min. Green Area or outside amenity area (total for site)		
W/in the commercial portion of site	15%	n/a w/ Phase II
W/in the residential portion of site	50%	64.7%
Min. Number of dwelling units approved	150 du's or	1,300 du's w/ Optional Method utilizing Project Plan
	Not > MP recommendation	2,600 for Town Center total 1,300 CTC total 768 CTC Phase I
Building Height	4 stories	4 stories
Max. Residential Density (total site)	30 du/ac	11.9 du/ac (1,300 du/109.17 ac)
Min Bldg setbacks (ft.):		
From one family zone		
Commercial bldgs	100 ft.	n/a - w/ Phase II
Residential bldgs	100 ft	50 ft*
From any street		
Commercial bldgs	n/a	n/a - w/ Phase II
Residential bldgs	n/a**	10 ft min**

* Per 59-C- 10.38 allows for setback reduction by 50% if there are trees or other features on the site that permit a lesser setback w/o adversely affecting development on the adjoining property. The applicant seeks a 50% setback in the areas adjoining the Clarksburg Historic District where mature trees are in place and are proposed to be saved and embellished with additional planting

** The Planning Board reviewed this setback during the Project Plan Review and found that no setback is necessary per the approved master plan.

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ANALYSIS: Conformance to Development Standards for the RMX-2 Zone

6-02014

PROJECT DATA TABLE

Development Standard	Permitted/ Required	Proposed
Lot Area (ac.):	30 ac.	77.61 AC Phase II 270.16 AC Total CTC parcel
Density (dwelling/acre):		
Dwelling Units:	1,300 total	487 du
One-family detached		
One-family attached Townhouse		
Multiple-family		
TOTAL		
Moderately-priced DU's included (see discussion ahead)		
Min Green area outside of amenity area (total for site)		
Min. W/in Commercial portion of site	15%	n/a
Min. w/in residential portion of the site	50%	52.4%(40.68 Ac)
Building height:	(38.81 ac) 4 stories	4 stories
Min. Residential Density	30 du/ac	11.9 du/ac (1,300 du/109.17 ac)
Min. Bldg Setbacks (ft.):		
From One Family Zone		
Commercial bldgs	100 ft.	n/a Phase III
Residential bldgs	100 ft.	n/a
From Any Street		
Commercial bldgs	n/a	n/a Phase III
Residential bldg	n/a	10 ft min*
Parking:		

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Total @ 2/du for TH & MF
(SFD pkg provided on lots)

668

668

264 off street

404 Garage

Standard

654

654

Handicapped-accessible

14

14

(On street parking not included)

* The Planning Board reviewed this setback during the Project Plan review and found that no setback is necessary per the approved Master Plan.

MPDU CALCULATIONS:

MPDUs required : 163 (12.5% of 1,300 units)

MPDUs provided: Phase I: 96 Phase II: 45 Subtotal: 141 MPDU's for
1,231 units or 11.45 %

With the approval of this Phase II Site Plan, the MPDU provision is slightly behind the number of units approved. To balance out the number of MPDU's with the number of units approved, a portion of units within Phase I are proposed to be delayed in construction. These 150 (approximately) units are identified as Block EE and GG on the MPDU Phasing Plan of May 2, 2002. These blocks are intended to be revised by the applicant in the future and returned to the Planning Board for re-approval. When the final section of Phase III retail and the residential and the revised Phase I residential uses are reviewed by the Planning Board the full measure of MPDU's will be supplied to the project.

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April 2, 2005

The Honorable Derick Berlage
Chairman, Montgomery Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Dear Sir:

I am writing this letter in protest of the actions taken by the builders in the Clarksburg Town Center. I freely admit that I have no expertise in the area of land law or the inner workings of the county planning commission. However, as a West Point graduate, I do feel that I have a solid background in the areas of integrity, appropriateness, and adherence to prescribed standards. Our master plan is called the master plan for a reason; it is the county-approved document for what is permissible in the Clarksburg Town Center. The builders have not adhered to the plan. I find it difficult to believe that any builder would include in their project bid that they intend to disregard the master plan, and any subsequent binding project plan in the pursuit of additional profits. However, here we are with numerous variations. Something has clearly changed from proposal to implementation.

When I purchased my home in this community, I did so with the vision of the small town feel with a traditional design orientation. I enjoy this area and I chose this area for many quality of life reasons that include a community that I enjoy. I specifically chose the lot that my home is built upon and was prepared to wait out the night sleeping my car through a nasty thunderstorm to secure that location. I am not an investor looking to make a dollar, I am a homeowner and a husband who is trying to provide the best life I can for my family.

In this era of rapidly appreciating home prices, it is a great time to be a builder. However, to make additional profit through improper practices is not acceptable. My Clarksburg Town Center Advisory Committee (CTCAC) has informed me that several of the setbacks and building height restrictions that are set forth in the project plan have been violated. One would have to infer that the changes resulted in additional profitability for builder. Otherwise, the builder's argument is that they changed the design to build larger residences and did not adjust the prices. However, because there have been sales price increases from phase to phase of the building development of the condominiums, that line of reasoning does not seem to be an adequate representation of their strategy. The prices rise in accordance to market value; smaller residences in the exact same location rarely command a premium over larger residences. That would lead to a conclusion of additional profitability for the builder.

If the project plan changed somewhere in the county planning process, that needs further examination. I would like to know how the plan changed. I would like to know what internal controls are in place to ensure that master plans and their subsequent project plans are not changed without due process. I would like to know what the process is and who approved the current process. I would like to know how we, as homeowners, can be assured that our county government is not under undue influence from builders to disregard published, public plans through back office dealing and other unsavory activity. I am not making any accusations or inferences that illegal activity has taken place, but I would like to know what was supposed to happen and why the system broke. I would like to know if an internal investigation has been launched to uncover what happened with the building restrictions.

To this point I have not specifically mentioned the retail center. The builder in this area did not act in good faith until a heavily attended community meeting demanded change. To their credit they agreed to work with the CTCAC to come to a more amenable solution. Although, there has not been anyone at a community meeting that has voiced an opinion in favor of having a very large Giant Grocery store included in the retail area. We apparently have one coming in. The residents and homeowners would prefer an option for our shopping needs. The addition of another Giant in this area does not seem to

I

Witthans, Wynn

From: Maria DeArros [mariadearros@comcast.net]
Sent: Saturday, April 02, 2005 12:49 PM
To: MCP-Chairman
Cc: Krasnow, Rose; Ma, Michael; Witthans, Wynn; Carter, John; Maskal, Nellie
Subject: April 14th, 2005 Hearing for Clarksburg

The Honorable Derick Berlage
Chairman, Montgomery Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Dear Mr. Berlage,

I'm writing to you with regard to my town, the Clarksburg Town Center. Specifically I wish for you to know and understand the need for proper oversight of the developers and builders here. If they (builders) do not conform to the Master and Project Plans as approved by MN-CPFC, I fear the Town Center will not realize its full potential.

My family purchased a home in Clarksburg Town Center in 2001, right at the beginning of the development. Our sales director at NV Homes, Ken, introduced us to the concept of Clarksburg's Master Plan. We visited the Terrabrooke Sales Trailer (before the visitor's center opened) and were thrilled with the vision of what could become the New Town Center on display. It was at the Terrabrooke Wine & Cheese Social where I first met Kathy Matthews and Nancy Hislop from the UpCounty Regional Services Office. We all visited with each builder and discussed the exciting possibilities of our new development with other families at that event.

So we fell in love with the Neo-Traditional Town Center style, bought a home almost a year before it would materialize out of the ground, and proceeded to move in and grow roots with the neighborhood. We watched as the bare fields were cultivated into this new town. Everyone is impressed with the explosion in the market that is driving such fast expansion in Montgomery County. We've met and established relationships with dozens and dozens of neighbors.

On August 4, 2004 a group of over 100 concerned Clarksburg Town Center residents met together after an earlier presentation in July made by Newland Communities regarding their retail section proposal. Newland's proposal seriously altered the original design of the Town Center retail section reflected in the Master Plan and Project Plan and marketed by the Builders and Developers of the Clarksburg Town Center. A number of residents at the August 4 meeting volunteered to serve on an advisory committee, and were voted by the meeting attendees to form the CTCAC to speak with one voice for the community to the developer(s). Newland and the residents thought this is a great idea, because when 200 or more neighbors attend the meetings with the developers, chaos ensues, and not all persons can be heard.

CTCAC has advised residents that there will be a hearing in front of the Board to review the facts regarding the issues about the building heights, and the setbacks from the streets, and possibly other problems where the developers have deviated from the Master and Project Plans.

I wish to go on record for your upcoming hearing of April 14th, 2005:

- I fully support the efforts of the CTCAC on behalf of the residents to uphold the Master Plan and Project Plan. Our Town Center is the central focus for the entire Town of Clarksburg. I'm very impressed with the quality of community involvement on the part of our residents, and how much they support the neighbors who are the CTCAC. The committee members have spent countless personal hours in a volunteer capacity. They've researched and studied all available

4/2/2005

J

April 2, 2005

make much sense for residents, given the proximity of the Neelsville Shopping Center – about three miles to the south. Again, I understand Giant's desire to keep competitors out, but I would like to know what the process is for selecting an anchor store in a retail area like the Clarksburg Town Center. I would like to know if there are written policies, processes, reporting requirements, and control systems in place to ensure that the business being conducted in the development of my hometown is being done appropriately and effectively.

As of this point in time, there does not appear to adequate controls in place within the planning commission to prevent plan deviation. If this is an employee workload issue, then there are a few solutions. First, slow down building until the proper processes are followed. Secondly, increase staff with qualified individuals. Thirdly, improve control systems, including separation of duties and responsibilities so that no one person can make inappropriate changes, to ensure that ANY changes to the master and project plans are done openly, publicly, and with input from those residents that are affected. Any of these measures would increase the process.

However, if the problem lies neither with the planning process nor the planning commission there must be a penalty levied upon the builders for changing the project plan of my hometown in the pursuit of additional profits. That penalty should be to the full extent of what the law allows. I am not advocating the removal of the buildings, however, I am advocating triple damages based upon the additional profits secured by the builder for his inappropriate or negligent activity. The levied amount should be returned to community for additional improvements and upgrades.

Every month that I send a check to my mortgage company, I am paying a premium to live here. All I am asking for is to receive what I am paying for and the assurance that responsible parties are acting responsibly, or that they are accountable for their actions.

You may feel free to direct any responses to this letter to the CTCAC or to me at the address below.

Sincerely,

/s/ Brian J. Keen

Brian Jeffrey Keen
23701 Clarksmeade Drive
Clarksburg, MD 20871

Homeowner

CC:

rose.krasnow@mncppc-mc.org
michael.ma@mncppc-mc.org
wynn.withans@mncppc-mc.org
john.carter@mncppc-mc.org
neffie.maskal@mncppc-mc.org

documentation from Park & Planning, in order to accurately understand the concept and details of the Master and Project Plans, and the County development approval processes. The CTCAC does an outstanding job of meeting with and communicating this information to the residents of the neighborhood.

- The initial Master Plan was written with sensitivity to the historic district of Clarksburg and this perspective must be observed in all aspects of the construction and development of our New Town Center. This is the one and only chance for Montgomery County to build our town properly. Accountability and adherence to the Project Plan is the only way to accomplish our goals.
- The need for buildings in "scale and compatibility" with the historic district was a key driver for the Master Plan. As a means of ensuring building in scale and compatibility, Community Based Planning included that language as a requirement and further stipulated the height cap for buildings proposed (45' residential and 50' commercial). The Board approved this in the Project Plan. As a resident of CTC, I expect total compliance with the approved Project Plan, conditions and findings.
- Not only was the existing condominium built on the highest point within CTC, it exceeds the 45' height limit. The building is clearly not in "scale and compatibility" with the historic district or surrounding buildings. Granted, it's a beautiful and well crafted building, but you would not put a Sears Tower in CTC either. If it's not in conformance with the Project Plan, the board must make a ruling as such and then determine what to do in the "go-forward plan". I do not want to penalize residents already living in this building, but it is imperative that the developer/builder be held accountable for the violation... be prevented from further violations...and in some way compensate the community for the existing violation.
- Additionally, I fear that the proposed design for the retail section will be too dense. The developer seems determined to include 75 to 100 more residential condominiums inside the retail area. This is not part of the Project Plan, and should be rejected. If they propose a density that has a parking ratio of less than 2 spaces per residential unit there will not be enough parking for the working families. The reason for the resident's extreme upset over the plan in 2004 was partly due to the inclusion of so much residential in the retail area, and apparently this has not changed.
- When you look at the developer's plan for the anchor grocery store, is that in keeping with "scale and compatibility" of the Town Center? No. The board should not approve a grocery with a footprint so large and out of character with the Town Center Concept. Why are the residents of the Town Center not being heard regarding the size and selection of the anchor store?
- I fully expect M-NCPPC to act as guardians on behalf of the people of this county, and CTC specifically, to restrict the builder to build the community according to the Master and Project Plans.

Respectfully, I would like to know what I can do to help insure that the Project Plan is carried out as already determined. This way my Town Center will be everything that I expected when my family purchased our home. Your response would be greatly appreciated, via email or my address below.

Thank you very much for your time and consideration to these matters,

Maria DeArros
12721 Piedmont Trail Road
Clarksburg, MD 20871
301-515-4756

4/2/2005

(J)

Cc: Rose Krasnow
Michael Ma
Wynn Withans
John Carter
Nellie Maskal

4/2/2005

(J)

Witthans, Wynn

From: Arvin Shroff [arvinshroff@comcast.net]
Sent: Tuesday, April 05, 2005 4:25 PM
To: Witthans, Wynn
Subject: Fw: Clarksburg Town Center

Resent per request from Dorothy Krass

----- Original Message -----

From: Arvin Shroff
To: Wynn.witthans@mcpcpc-mc.org
Sent: Friday, April 01, 2005 9:38 PM
Subject: Clarksburg Town Center

We moved to Clarksburg Town Center (CTC) about a year ago from Kentlands in Gaithersburg. We saw an exciting new plan that proposed a variety of housing, shopping and recreational areas for CTC. The plan was exactly what we were looking for and Clarksburg area was a perfect fit for our family. We thought the County Planning Board and the Clarksburg Citizens Group had done an excellent job and CTC was the perfect place for us.

When we first moved in, we had difficulty with obtaining telephone service, internet connection and mail delivery. To our surprise we found out from one of the County inspectors that the County does not consider telephone and internet services as essential for providing occupancy permit. In this day and age both of these are essential requirements. We lived with these hardship for a couple of months.

The purpose of my communication is to request you, as our elected representatives, to look after the best interest of the county citizens. We have noticed to our surprise that no one has been holding the developers and the builders accountable as the CTC moves forward. They are taking liberty with the plan that was approved by the board. They have made unauthorized changes that are detrimental to future well being of this community. In fact they have built structures that go way beyond what was allowed in the plan.

We expect you to hold the developer and the builders accountable at the forth coming hearing. We expect you to honor your commitment to the citizens of this County. We expect you to assure that the original plan stays intact and we expect you to hold firm. We moved to this community based on the plan that you had approved and that the builder and the developer had accepted. They came to CTC knowing what was expected of them. You should not be a party to what amounts to "bait and switch" tactic at this time.

We look forward to the hearing and will take copious notes at the proceedings to see who stands up for the ordinary citizens and who sides with the developer and the builders.

Thank you.

Arvin P. Shroff

Theresa Shroff

4/6/2005



Witthans, Wynn

From: Waveleteer@aol.com
Sent: Friday, April 01, 2005 9:01 AM
To: MCP-Chairman
Cc: Krasnow, Rose; Ma, Michael; Witthans, Wynn; Carter, John; Maskal, Nellie
Subject: Clarksburg Town Center

23613 General Store Drive
Clarksburg, MD 20871
301-916-2412

April 1, 2005

The Honorable Derick Bertage
Chairman, Montgomery Planning Board
MNCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Clarksburg Town Center

Dear Mr. Bertage:

I am a resident of Clarksburg Town Center. When deciding to purchase my home, I reviewed the Clarksburg Master Plan and visited MNCPPC to learn about the project and was very impressed with the care with which protection of the environment and density of development was considered. I was also impressed by the development concept of a small town look and feel with respect for the historic district and open green space. After speaking with MNCPPC, developers and builders, I got the impression that I could be confident that MNCPPC would make sure that the parameters and spirit of the Master Plan and approved Project Plans would be followed.

That is why I was surprised to hear that there may be existing and planned buildings that exceed height parameters in the Project Plan by as much as 20% or even more. To me, this is a big difference in scale, and makes a noticeable change to the rooflines, views and the look and feel of the community.

While change is inevitable, the bottom line to me is that the development in the area has only begun and that the MNCPPC should take a strong position with builders and developers that the Master Plan and Project Plans will be followed.

I support the efforts of the Clarksburg Town Center Advisory Committee in bringing this issue to the attention of the MNCPPC for appropriate action.

Sincerely,

Barbara Geshwind

Cc: Rose Krasnow
Michael Ma
Wynn Witthans
John Carter
Nellie Maskal

4/1/2005

②

cCa
Clarksburg Civic Association
Clarksburg, Maryland 20871-0325

March 30, 2005

The Honorable Derick Berlage
Chairman
The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Chairman Berlage

On Monday March 28, 2005, the Clarksburg Civic Association unanimously resolved to support the conditions and findings of the Project Plan (9-94004 as approved by the Planning Board May 11, 1995) as it pertains to setbacks (10 feet from any street for residential properties) and building heights (4 stories/45 feet for residential and 4 stories/50 feet for commercial).

During the 1992-1994 timeframe, the CCA has communicated its intent to maintain height restrictions, especially in the Town Center.

Among the CCA's consensus positions in 3/23/92 were:

"The Town Center District should not be planned around a predetermined population. Height limits necessary to establish a small town character should be the dominant consideration. No residential development east or west of I-270 should exceed three stories in height."

As the Master Plan process continued, in a 8/10/93 consensus position:

"The Town Center and Transit Corridor Districts should not be planned around a predetermined population. Height limits necessary to establish a small town character should be the dominant consideration. Six to eight story apartment buildings are inappropriate. Residential development should not exceed three to four stories." And considering that this paragraph included the Transit Corridor District, it would not be condoning a tall four stories in the Town Center.

In the matter at hand, it seems clear that a project plan restriction that is not explicitly over-ruled in a subsequent site plan (with adequate explanation and process), remains a construction restriction.

Sincerely yours,

Paul E. Majewski
President
Clarksburg Civic Association

(M)

From: Siegel, Lewis - BLS [Siegel.Lewis@bts.gov]
Sent: Tuesday, March 29, 2005 11:23 AM
To: Krasnow, Rose; Ma, Michael; Witthans, Wynn; john.carter@mnccp-mc.org;
'nelli.maskal@mnppc-mc.org'
Subject: FW: Height Violations at Clarksburg Town Center

> -----Original Message-----
> From: Siegel, Lewis - BLS
> Sent: Tuesday, March 29, 2005 9:58 AM
> To: 'mcp-chairman@mnccp-mc.org'
> Subject: Height Violations at Clarksburg Town Center
>
> The Honorable Derick Berlage
> Chairman
> Montgomery County Planning Board
> 8787 Georgia Avenue
> Silver Spring, MD 20910
>
> Dear Mr. Berlage:
>
> This is to express our concerns over the apparent intentional
> noncompliance of Newland Communities, Bozzuto Group, and Craftstar
Homes
> with the Board-Approved Project Plan for Clarksburg Town Center (CTC).
As
> resident property owners in CTC since August 2003, we believe that we
have
> a right to expect total adherence to the approved project plan,
> conditions, and findings. And we have implicitly placed in the hands
of
the Planning Board the responsibility for enforcing such adherence.
Builders and developers do not have a right to build as they please
> without regard to the Project Plan Guidelines. Why have Master Plans
and
> Community-based Planning, if the resultant plans will not be enforced?
Is
> not the Planning Board the guardian of the community's best interests?
> Shouldn't you be protecting us from the hungry developers and
builders?
>
> In particular, we point to the 4 stories and 45' height restrictions
for
> residential buildings. Two projects in the CTC--the already
constructed
> and occupied Bozzuto condominiums and the proposed Craftstar 2-over-2
> condominiums--exceed these limits. While we would not suggest that
> residents of the completed Bozzuto condominiums be displaced to
correct
> the violation, we would suggest that the builder be held accountable
for
> the violation by somehow compensating the community. Craftstar should
be
> instructed to go back to the drawing board and develop a design that
is in
> compliance with the Project Plan. Only by taking actions like this
can a
> clear message be sent to developers and builders that they cannot take
> advantage of newly developing communities.
>
> Fortunately, the residents in CTC have an active and well-informed

> volunteer group the Clarksburg Town Center Advisory Committee

> which is looking out for the best interests of the community. We
agree
> with and strongly support the efforts of the CTCAC in upholding the
> Project Plan.

> We hope that you will consider these comments when you conduct your
April

> 14 hearing.

>

> Sincerely,

>

> LEWIS B. SIEGEL

> RUTH A. SIEGEL

> 23617 Public House Road

> Clarksburg, MD 20871

> 301-540-5562

>

March 29, 2005

The Honorable Derick Berlage
Chairman, Montgomery Planning Board
MN-CPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910

**RE: HEIGHT VIOLATIONS FROM BUILDERS IN THE CLARKSBURG TOWN
CENTER (CTC), CLARKSBURG, MARYLAND.**


Dear Honorable Mr. Berlage:

We trust this letter finds you well. We, the above undersigned, are residents in the Clarksburg Town Center (CTC) since December of 2004 at the address in the above letterhead. Moving into this most promising and beautiful community has represented for us a great deal of contentment, satisfaction, and joy. We had been waiting approximately two years to move in after purchase. Unfortunately, the reason for this letter is one of towering apprehensions, concerns, and alarms regarding flagrant height violations by the developer and several builders in this growing community.

It appears that one existing Bozutto condominium is in height violations by the developer and such said builder, as well as an additional, to-be-built and approved via site plan, Bozutto condominium and Craftstar 2 by 2. We are extremely dismayed by these blatant violations of pre-approved Project Plan Guidelines. It seems that the developer and builders are constructing the above mentioned structures higher than the approved forty-five (45) feet guideline in the Master Plan. Buildings are, and will exceed the height parameters. We respectfully request and insist that the Honorable Board, which you Chair, prevents this from happening now and in the future.

Mr. Berlage, when we decided to live in this community we took upon ourselves to dedicate many hours, days, and weeks to research the Master Plan for the CTC, from the time of the Terrabrook Developer to the actual Newland Developer. We even came on weekends to talk with the first residents. After many months and talks, we became captivated and enamored with the promise of a Master Plan that was written with sensitivity to the historic district of Clarksburg. We had lived in other historic districts, i.e. Old Town Gaithersburg. We were extremely attracted to living here because the Master Plan was driven and underlined by buildings in scale and compatibility with this historic district. Further, it is our understanding that Community Based Planning, which is the MN-CPPC group that is mostly responsible for crafting the Project Plan, included building scale and compatibility as a requirement, and predetermined the height maximum for buildings proposed, i.e. 45 feet for residential and 50 feet for commercial. There is a data table in the Project Plan that was approved by the Board, which specifies that buildings will not exceed 4 stories/45 feet for residential use and 4 stories/50 feet for commercial use.

We are certain that you would definitely agree with us that builders and developers should not have the right to build as they please. This is coupled by the unashamed fact that it appears as if they have no regard or consideration for the CTC Project Plan Guidelines, as not only is the existing condominium built on the highest point within the CTC, but it exceeds the 45 feet height definition by 8 to 12 feet, although there are varying reports regarding actual height. Needless to say, Mr. Berlage, this building, and the others proposed, are clearly not in scale and compatibility with the historic district or surrounding buildings. One could argue that the building in question may be considered attractive; however, it is not in conformance and compliance with the Project Plan.



We had learned that the CTC is zoned under what is called RMX2 zoning with the "Optional Method" for development; and that under the "Optional Method," all site plans must conform to the Project Plan. As such, we hereby insist and respectfully request total adherence to the approved Project Plan, conditions and findings.

It is of utmost importance that the developer and builders be held accountable for such actual and future violations. For our family and many residents of the CTC, there is an underlining issue of accountability. Unfortunately, because to date there has not yet been an official County or State warning presented to the developer and builders, we trust that your Honorable Board will do something to immediately prevent further violations. In addition, it is our firm belief that the community should be compensated for the actual existing violations. We can imagine how much the developer and builder profited from the sale of these condominiums but, would you agree that a lucrative market is an appropriate license to violate a Project Plan? And, certainly, this would not be the Montgomery County which we envision for years to come.

In summary, there is dire need for accountability and adherence to the CTC Project Plan. We see you and the MN-CPPC as safeguards of our Project Plan. Please remember that we, the community, will live here for many years to come; our children will grow here; our families will become stronger and, in many ways, in advantageous positions to take care, invest and cherish, prize, and treasure our neighborhood and its residents. The developer and the builders will depart.... We are certain that the Board will strive to protect the community's best interest, as inhabitants that we are of Montgomery County in Maryland.

In closing, we hereby state and reaffirm our full and unconditional support for the efforts and actions of the Clarksburg Town Center Advisory Committee (CTCAC) and beseech the Planning Board to protect the interest of the residents of Clarksburg Town Center.

Most sincerely,

Alfonso R. Latoni

Carmen S. Ramirez

Copies via email attachment: John Carter (john.carter@mncppc-mc.org)
Rose Krasnow (rose.krasnow@mncppc-mc.org)
Michael Ma (michael.ma@mncppc-mc.org)
Wynn Witthans (wynn.witthans@mncppc-mc.org)
Nellie Maskal (nellie.maskal@mncppc-mc.org)



March 28, 2005

The Honorable Derick Berlage
Chairman, Montgomery Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Chairman Berlage:

I am a resident in the Clarksburg Town Center in Clarksburg, MD. One of the reasons my husband and I purchased a home in this community three years ago was because of the developer's assurance that the quaint historical character of the existing community would be maintained at every level of construction and development.


I am writing to express my concern for certain aspects of the development thus far. It was my understanding that the master and project plan specify that residential buildings would not be taller than 45', but the current condominium buildings are obviously higher than this limit. How is it that they have been able to violate oversight of the master and project plans? Also, what further violations will be allowed that benefit the developer's agenda at the expense of the residents of this community?

Additionally, I'm concerned and upset that the planned grocery store is way out of proportion and character that would be appropriate for a Town Center such as Clarksburg.

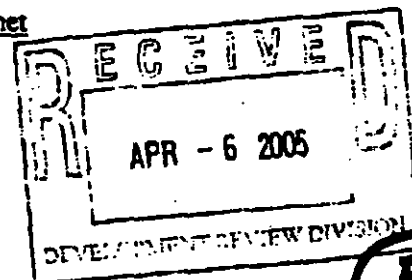
The developer needs to be held accountable for these violations and the Clarksburg residents need assurance that future construction will follow the master and project plans as approved, not as they wish. As a resident, I count on the M-NCPPC to protect the interests of this community.

Thank you for your time.

Sincerely,


Teresa Ziffer
12723 Piedmont Trail Road
Clarksburg, MD 20871
dtziffer@comcast.net

C: Rose Krasnow
Michael Ma
Wynn Witthans
John Carter
Nellie Maskal



March 27, 2005

The Honorable Derick Berlage
Chairman, Montgomery Planning Board
MNCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Clarksburg Town Center

Dear Mr. Berlage:

We are residents of the Clarksburg Town Center (CTC) community in Clarksburg. When we submitted the purchase contract for our home in February 2002, we were excited to be moving in to the community, and were attracted by the variety of housing, shopping and recreational areas proposed for CTC.

As the community has grown, we have been surprised to see that the developer has not been held to the Project Plan, and builders are erecting buildings that do not conform to the approved Plan.

Specifically we are concerned about the height of some of the condominiums that have been built, and other buildings that are planned for CTC. A height difference of ten or twelve feet may not seem like a big deal to some people, but for those who have a direct view of the buildings, it makes quite a difference. Although they are attractive architecturally, the buildings are certainly not to scale with surrounding buildings and homes, and take away from the overall look of the community. We chose to live in CTC because we were led to believe the community would be compatible with the historic district of Clarksburg, not a new Rockville or Silver Spring.

By no means do we wish to see these buildings removed, we simply want the builders and developer to be held accountable for the violation, and no additional buildings, residential or commercial, constructed in a way that would violate the Plan.

We fully support the efforts and actions of the Clarksburg Town Center Advisory Committee and implore the Planning Board to protect the interest of the residents of Clarksburg Town Center. We are the ones who will have to live with these buildings after construction is completed and the developer and builders have moved on to their next project.

Respectfully,

William Karlson

Lisa Karlson

Copy: John Carter
Rose Krasnow
Michael Ma
John Carter
Nellie Maskal

④

MCP-Chairman

2005-0368

From: Stan Weightman [stanweightman@mrisc.com]
Sent: Friday, February 18, 2005 10:04 AM
To: MCP-Chairman
Subject: Clarksburg

Dear Mr. or Ms. Chairman,

My wife and I are owners of a condominium on Clarksburg Square Rd. in Clarksburg, MD.

Last evening I attended a meeting and was introduced to the idea that there is a group calling itself the Clarksburg Town Center Advisory Committee (CTCAC). Who are these people? They don't represent me or any of the many people that gathered last evening to discuss the height of the building in which I purchased. I understand that they (whoever "they" are) have subsequently filed a complaint with your department regarding the height of the condominium buildings.

It's interesting to note that there were people at the meeting last evening who attended a meeting sponsored by CTCAC. They were identified as people owning condo's and surprisingly their names were lost?? or dropped of the Email list which was supposed to be a means of the CTCAC contacting interested persons. Sounds a little, or a lot, of a clandestine operation. I know that neither my wife or I have ever been contacted to lend our voice or ideas.

We were told at the meeting last evening, by a resident who had attended a CTCAC meeting, that the purpose of their (CTCAC) questioning the building heights is mainly to use it as leverage to force the builders/planners/developers to acquiesce to some of their demands regarding the town center.

I truly trust that your committee will not be coerced or bend to their (CTCAC) request for a hearing for something that has passed any and all planning for Montgomery County and has been approved by Montgomery County. I'm sure there is some law or regulation that requires a hearing. I'm also sure that there is a law or regulation for the chairman to remove it from the agenda.

I'm told that in the initial Project Plan, the condo's were indicated as having 4 floors with a notation (45 feet) next to it. That was the last time, as I understand it, that the "45 Feet" was mentioned, through preliminary and final plans...all reviewed, approved and accepted by the powers that be in Park and Planning.

Why are we revisiting this issue? At taxpayers expense? And why do you and I and many others have to waste our time and effort on this issue?

What is the motivation for requesting the hearing. Apparently it came out in a CTCAC

2/18/2005

A handwritten capital letter 'R' enclosed within a hand-drawn circle.

Elizabeth R. Forrest
12824 Clarksburg Square Road
Unit 406
Clarksburg, MD 20871
301-916-8756 e-mail betforrest@earthlink.net

February 18, 2005

Planning Board
MNCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

RECEIVED
0369
FEB 23 2005

OFFICE OF THE DIRECTOR
THE MONTGOMERY NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Re: Community representation

To the Montgomery Planning Board:

My son moved to a house in Clarksburg with his wife and their three daughters about two years ago. I have lived on Long Island, NY all my life, but decided that the time had come to get more involved in my granddaughters lives.

I purchased a condo from Bozzuto without blinking an eyelash because my son, who has lived in Maryland for twenty years and has his business's here, praised his organization to the sky. From the very beginning of the process I was treated as though I had purchased a two million-dollar mansion. The organization and staff were professional, efficient and extremely helpful and everything was done with such skill and class.

There are many reasons why I bought this condo:

1. The elevator - my mother lives with me, she is 91, and stairs are not an everyday option.
2. The size of the apartment - 1875 Sq. Ft. Which allows for three bedrooms, one for me, one for my mother, and one for family and guests to sleep in when they Come to visit.
3. It's very nice having a building and community which can accommodate so many diverse ages, types of people and situations. Young singles, newly weds, empty nesters, and seniors who no longer want the stairs or the upkeep of a single family home or townhouse.
4. The eight and nine foot ceilings that they now have in almost all new homes also give the feeling of spaciousness.

(S)

As a new home owner I immediately joined the Clarksburg Civic Association and have offered my services on the Board of Directors here at the Condo. In October a flyer was distributed in my building stating that there was a meeting on October 20, 2004 at 7:00 P.M. at the Hyattstown Fire Department. Before the meeting started, I had the opportunity to introduce myself to many people as they came in and raved about how happy I was in my new Condo and how unbelievably I was treated by the Bozzuto's organization and staff. I got very strange vibes and soon learned that living in the Condo's was a stigma rather than something to be proud of as part of a community.

Carol Smith, Amy Presley, Kim Shiley and a man whose name I do not know started the meeting with a brief overview of the Clarksburg Master plan and the retail center and before long the meeting took on a tone of "I hate Bozzuto, I hate the Condo's, I don't like looking up at them, their too high and let's tear them down!" While the women on the "Clarksburg Town Center Advisory Committee" stated that this was not the intention of the group, they agreed that the interpretation or the height of the buildings in the Master plan stated four (4) floors but they felt it should be 45 feet from the front door to midpoint on the roof. They also stated that this could be used as a wedge to get what they really wanted in the retail center and that they could hold up the building process by continually bringing up this point.

Two of my neighbors, Jean Cassey and Patricia O'Callahan, were also at this meeting and we soon felt like unwanted trash. I felt as though we had stumbled into a secret group meeting which was not meant for our ears. The fact that real live human beings with feelings, hopes and dreams, not to mention a financial investment, live in the Condo buildings seemed to escape the Committee and the audience. The majority of the people at the meeting were owners of single family homes and townhouses. We were so taken back by what was being said that we were left speechless. We were not sure whether to stay or go home and wake up our neighbors so that we could stand in front of the building and prevent the wrecking ball from knocking down our homes. As instructed, we all left our names and e-mail address's on the sign in sheet and were promised updates on future events, meetings and information, but to date have received none.

There is a communicating system in place in the Clarksburg Town Center now and all items of interest can be posted on the Intranet. This organization is not listed anywhere on the intranet under clubs or organizations. There are over 380 residents listed on the intranet so it is a perfect place to transmit information. If this group is representing the Clarksburg Town Center then why are they not listed as such.

As a matter of fact there is a meeting Thursday, February 24, 2005 at the Firehouse in Hyattstown at 7:30 P.M.. We found out about it from a Damascus reporter who asked one of the residents, who lives in the building, if they were going. The reporter said he would be there as well as the "Clarksburg Town Center Advisory Committee" and

5

Michael Knapp - Councilman. I do not know who called the meeting or why, we were not told, but I will attend and find out what it is all about.

I moved to this community because I wanted to be part of a multi faceted type of living with a variety of ages, races and situations. I also wanted to be part of the decision making process, not the object of it. We who live in the Condo's seem to have been completely and deliberately left out of this process as though we do not exist. Needless to say I am disappointed and dismayed at the discrimination I find in a community purported to have originated mainly to bring together a community of diverse interests, ideas and people.

This group that calls themselves "The Clarksburg Town Center Advisory Committee" obviously do not represent the entire community and have spent time ad-nauseam over a people friendly retail center and the height of a building when maybe some time should have been spent bringing the entire community together as a group to find ways to improve it. We are people and we are friendly and we want to be a part of the community not the enemy! I applaud these women for the time and effort they have put into making the retail center more pleasing to the eye and in making it more people friendly. Improving the community further may include making more room for people who want and need condo's and MPDU's. This will allow the maximum amount of people to realize the American Dream. Sometimes the only way to increase the overall dream is to go up when out is not possible.

Needless to say my Mother, myself and all the residents who bought these condo's in good faith are now horrified by the decision to re-evaluate something that was already reviewed, approved, in compliance, closed on and now fully occupied by the home owners. We have all spent time and money to make our condo's our homes and hope the outcome does not leave us all on the street - he:neless!

If you have any questions, please do not hesitate to call, e-mail or write.

Sincerely,

Elizabeth R. Forrest

PS - Happy to be in Maryland and hopeful of being part of a positive and productive community!

P.P.S. - At the last Planning Board Meeting on February 10, 2005 Additional Parking spaces at the new condo's was a part of the approval plan. This should make the single family and townhouse owners very happy because some of them park in these area's because they use their garages as storage units, not for their cars.

5

FEB 24 2005

2005-0248

MCP-Chairman

From: adariani@comcast.net
Sent: Wednesday, February 23, 2005 7:03 PM
To: MCP-Chairman
Subject: Re: Height of building #3- 12824 Clarksburg Square Road!

THE MONTGOMERY COUNTY PLANNING BOARD
PARK AND PLANNING COMMISSION

Hello there,

My name is Maleeche Dariani and I am the owner of unit#402 at 12824 Clarksburg Square Road, in Clarksburg MD.

I have just been informed by other residents in our building that the Clarksburg Town Center Advisory Committee has filed a complaint with the Planning Board with reference to the height of our building at 12824 Clarksburg Square Road! First and foremost I have to say that I do not know who the Clarksburg Town Center Advisory Committee thinks they are representing because they certainly are not representing any of the condominium owners! If the Committee were representing condominium owners such as myself who have invested both a great deal of my hard earned money, and my valuable time then the Clarksburg Committee would have informed first the condominium owners such as myself and not file this complaint with the Montgomery County Planning Board in secret as it so appears to all of our residents at 12824 Clarksburg Square Road!

I personally think that this frivolous complaint with the builder (bozzuto) was just a strong arm tactic for the Clarksburg Town Center Advisory Committee to get their way in terms of their requests with the Clarksburg Shopping Center development plan! Please note that my son Amir Dariani lives in a bozzuto built condominium in the King Farm development which is similar to the height of the 12824 Clarksburg Square Road building that is in compliance with the approved masterplan. Once again I (Maleeche Dariani) along with most of our residents at 12824 Clarksburg Square Road, in Clarksburg MD love this community, and are a part of the community therefore we also need to be notified of any public meetings or complaints that might have serious consequences to our community. That is basically why neither I nor any of my neighbors feel that the Clarksburg Town Center Advisory Committee is representing us, otherwise the committee would not have filed this complaint with the board without properly informing us at 12824 Clarksburg Square Road in Clarksburg, MD!

I sincerely hope that the Montgomery Planning Board dismisses this complaint with regards to the fact that the building is currently fully occupied, also the builder (Bozzuto) has not exceeded the four floor masterplan, and the underhanded way the Clarksburg Town Center Advisory Committee filed this complaint without properly notifying the residents at 12824 Clarksburg Square Road who after all would be the most affected by this unusual and unnecessary complaint!

Sincerely,

Maleeche E.
Dariani
Clarksburg Square Road,
Apt#402
Clarksburg,
MD

12824

(T)

301-977-1281

2/24/2005